

No. 12228

United States
Court of Appeals
for the Ninth Circuit

ESTATE OF ABRAHAM KOSHLAND, De-
ceased, JESSE KOSHLAND, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court
of the United States

FILED

JUN 15 1949

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

SAMUEL TAYLOR, Esq.,
EDGAR SINTON, Esq.,
BERNARD SHAPIRO, Esq.

For Respondent:

A. J. HURLEY, Esq.

Docket No. 13780

Estate of ABRAHAM KOSHLAND, Deceased,
JESSE KOSHLAND, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1947

May 5—Petition received and filed. Taxpayer notified. Fee paid.

May 6—Copy of petition served on General Counsel.

May 5—Request for Circuit hearing in San Francisco, California, filed by taxpayer. 5/21/47 Granted.

June 10—Answer filed by General Counsel.

June 10—Request for hearing in San Francisco, California, filed by General Counsel.

June 12—Copy of answer and request served on taxpayer. San Francisco, Calif.

1948

Jan. 26—Hearing set March 22, 1948, in San Francisco, California.

Mar. 23—Hearing had before Judge Kern on merits. Appearance of Bernard Shapiro as counsel filed. Stipulation of facts with Exhibits A through D; Amended petition (copies served); Answer to Amended petition (copies served) filed at hearing. Petitioner's brief due 5/7/48. Respondent's brief 6/7/48. Petitioner's reply due 7/7/48.

Apr. 12—Transcript of hearing 3/23/48 filed.

May 5—Motion to amend record to include the attached stipulation of facts—stipulation of facts lodged, filed by taxpayer. 5/6/48 Granted.

May 5—Brief filed by taxpayer. Copy served.

June 11—Motion for leave to file the attached brief. brief lodged, filed by General Counsel 6/18/48 Granted and served.

June 28—Motion for extension to 7/22/48 to file reply brief, filed by taxpayer. 6/28/48 Granted and served.

July 16—Motion for extension to 8/22/48 to file brief, filed by taxpayer. 7/16/48 Granted and served.

Aug. 16—Reply brief filed by taxpayer. Copy served 8/17/48.

948

Nov. 30—Findings of fact and opinion rendered, Judge Kern. Decision will be entered under Rule 50. 12/1/48 Copies served.

Dec. 27—Motion to amend and supplement findings of fact, embodying amendment, filed by taxpayer. 1/5/49 Denied.

949

Jan. 6—Copy of motion and amendment served on General Counsel. [1*]

Jan. 19—Computation filed by General Counsel.

Feb. 3—Hearing set March 7, 1949, on settlement—Washington, D. C.

Feb. 11—Notice changing hearing date to March 9, 1949.

Feb. 14—Consent to respondent's computation filed by taxpayer.

Feb. 25—Decision entered. Judge LeMire. Div. 5.

Mar. 21—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by taxpayer.

Mar. 23—Designation of record filed by taxpayer. Service acknowledged thereon.

Mar. 25—Statement of points filed by taxpayer.

Apr. 14—Proof of service of designation of contents of record on review filed.

Apr. 14—Proof of service of statement of points filed. [2]

* Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 13780

Estate of ABRAHAM KOSHLAND, Deceased;
JESSE KOSHLAND, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols, San Francisco Division, IRA:ET-90-D LAB, and dated April 7, 1947 and as a basis of its proceeding alleges as follows:

1. The petitioner is an estate of a decedent. The decedent, Abraham Koshland, died on April 15, 1944, and his estate is being probated in the Superior Court of the State of California, in and for the City and County of San Francisco. Jesse Koshland is the duly appointed, qualified and acting executor of said estate.

2. The notice of deficiency (a copy of which is attached to the original petition filed in this case as [3] Exhibit A, and is incorporated by reference in and made a part of this amended petition as Exhibit A) was mailed to petitioner on or about April 7, 1947.

3. The amount of the deficiency determined by the Commissioner is \$49,062.25 in estate tax. All of

said amount is in controversy. The petitioner is claiming a refund in estate tax and said claim for refund is in controversy. The estate tax return of petitioner was filed with the Collector of Internal Revenue for the first district of California, in San Francisco, California, on or about May 24, 1945.

4. The determination of the tax set forth in said notice of deficiency and the refusal of the Commissioner to allow said claim for refund are based upon the following errors:

(1) The Commissioner erred in including in the gross estate the value of the remainder interest in a trust created by the petitioner on or about December 26, 1922 (Exhibit B), and amended by petitioner on or about December 26, 1923 (Exhibit C).

(2) The Commissioner erred in determining the value of the life estate of Estelle W. Koshland in said trust, which life estate he excluded from the gross estate. The Commissioner undervalued said life estate. [4]

(3) The Commissioner erred in determining the value of said remainder interest in said trust, which remainder interest he erroneously included in the gross estate. Assuming that the remainder interest was includable in the gross estate, the Commissioner, by undervaluing the life estate of said Estelle W. Koshland, overvalued said remainder interest.

(4) The Commissioner erred in not allowing to the petitioner full credit for state inheritance, estate, legacy and succession taxes paid or payable.

(5) The Commissioner erred in not allowing to

the petitioner a deduction from the gross estate for legal fees payable as a result of this proceeding.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) On or about December 26, 1922, the decedent created a trust by transferring certain securities to Jesse Koshland and Stanley H. Sinton, who declared themselves trustees thereof. A true and correct copy of said trust is attached to the original petition filed in this case as Exhibit B, and is incorporated by reference in and made a part of this amended petition as Exhibit B.

(2) On or about December 26, 1923, the decedent amended said trust. A true and correct copy of said amendment is attached to the original petition filed in this case as [5] Exhibit C, and is incorporated by reference in and made a part of this amended petition as Exhibit C.

(3) At the time of the creation of said trust as Exhibit B, and for many years prior thereto and for the period subsequent thereto until April 15, 1944, the date of his death, the decedent, Abraham Koshland, and Estelle W. Koshland were husband and wife.

(4) The decedent, Abraham Koshland, was born on March 22, 1869, and died on April 15, 1944. He was 75 years of age at the time of his death. Estelle W. Koshland was born April 8, 1878, and is still living. She was 66 years of age at the date of decedent's death.

(5) The decedent and Estelle W. Koshland had two children, Stephen A. Koshland, who was born

on February 21, 1902, and was 42 years old at the date of his father's death, and William A. Koshland, who was born on November 9, 1906, and was 37½ years old at the date of the death of his father. Both children are still living. William A. Koshland never married. Stephen A. Koshland married on April 14, 1938, and his wife is still living and married to him. They have had two children, Anthony S. Koshland born on March 26, 1940, who was four years old at the time of decedent's death, and Kathryn Koshland born on July 16, 1943, who was under one year of age at the time of decedent's death. Both of said children are still living. [6]

(6) Both Stephen A. Koshland and William A. Koshland had executed valid wills prior to the death of their father. Each of said wills appointed the property covered by said trust (Exhibit B) as amended by Exhibit C, to persons other than their father and his estate.

(7) Estelle W. Koshland under paragraph Fourth (a) of said trust, Exhibit B (quoted below), was and is entitled to an annual income of \$15,000 for life, payable out of the income of said trust to the extent that there is income available and out of the principal of said trust if the income is insufficient.

“Fourth: At any time or during any period when no income is received, or where the income received is less than Fifteen Thousand (15,000) Dollars in any year, the Trustees may, upon the application of any beneficiary, apply and expend such part of the principal of the fund as may be necessary:

(a) To provide either the said Estelle W. Koshland or the said Abraham Koshland with an income of Fifteen Thousand (15,000) Dollars for such year;”.

(8) The value of the life estate of Estelle W. Koshland as of the date of Abraham Koshland's death, April 15, 1944, was \$170,236.95. The value of the remainder of said trust as of said date was \$61,287.69. The Commissioner in his deficiency notice Exhibit A, [7] based the value of said life estate on an annual income of \$9,260.99 and upon a Table A factor for a one dollar annuity at age 66 of 7.52476, and upon a factor for quarterly payment of 1.01488. The use of said Table A factor and said factor for quarterly payments are provided for in Regulations 105, Section 81.10(i). Said Table A which is a part of said section, is based on the Actuaries' or Combined Experience Table of Mortality. Said Actuaries' or Combined Experience Table is and was as of April 15, 1944, obsolete. Said factor for quarterly payments is actuarially unsound. The value of said life estate of Estelle W. Koshland as of said date of death, to wit, \$170,236.95, is properly determined on an annual income of \$15,000 a year and by using a factor (which includes the element of quarterly payments) for one dollar annuity for a female age 66 of 11.3491. Said determination is based upon a 4 per cent interest rate, the same as the interest rate used by the Commissioner in the deficiency notice, Exhibit A.

(9) The petitioner has paid and will be required

to pay state inheritance, estate, legacy and [8] succession taxes in an amount in excess of the sum of \$17,699.97, the amount for which credit for said taxes has been allowed by the Commissioner. The petitioner is entitled to the full 80 per cent credit against the estate tax for said taxes paid and payable.

(10) The petitioner, as a result of this proceeding, will incur and pay legal fees in an amount as yet undetermined, but which will be determined prior to the entry of a decision in this proceeding. The petitioner may, if said decision is appealed by either itself or the Commissioner, incur and pay in connection with said appeal additional legal fees in an amount as yet undetermined but which will be determined before said decision becomes final. Said fees are deductible from the gross estate.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is no deficiency in estate tax due from said petitioner, and that there is a refund in estate tax due to said petitioner in an amount determined by deducting from the gross estate the [9] legal fees to be paid by petitioner as a result of this proceeding and of any appeal which may be taken from the decision of the Court therein, and further determined by allowing the full 80 per cent credit against the estate tax for the amount of the state inheritance, estate, legacy and succession taxes paid or payable, and in the alternative, should this Court determine that the remainder interest in said trust, Exhibit B, as amended by Exhibit C, is includable in the gross

estate, that it may determine that the value of the life estate of said Estelle W. Koshland which is excludable from the gross estate is \$170,236.95 and that the value of said remainder interest is \$61,287.69 and that it may grant such further relief as to it may seem proper.

Dated: San Francisco, California, March 15th 1948.

Respectfully submitted,

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON.

[Endorsed]: T.C.U.S. Filed March 23, 1948. [10]

State of California,

City and County of San Francisco—ss.

Jesse Koshland, being first duly sworn, depose and says:

He is the duly appointed, qualified and acting executor of the Estate of Abraham Koshland, deceased, the petitioner named in the foregoing amended petition; he has read the said amended petition and is familiar with the statements contained therein, and said statements are true.

/s/ JESSE KOSHLAND.

Subscribed and sworn to before me this 15th day of March, 1948.

/s/ LULU P. LOVELAND,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires August 27, 1951. [11]

EXHIBIT "A"

Form 1279

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Office of Internal Revenue Agent in Charge
San Francisco Division
IRA: ET-90-D LAB

April 7, 1947

Estate of Abraham Koshland, Deceased
Jesse Koshland, Executor
c/o Edgar Sinton
1650 Russ Building
San Francisco, California

MT-ET-16120 First California
Estate of Abraham Koshland
Date of death—April 15, 1944

Dear Mr. Koshland:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of \$49,062.25, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this let-

Exhibit "A"—(Continued)

ter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

/s/ JOSEPH D. NUNAN, JR.,

Commissioner,

By /s/ F. M. HARLESS,

Internal Revenue Agent in Charge

Enclosures: RR Statement Form. [12]

ESTATE TAX

Statement

	Liability	Assessed	Deficiency
Estate Tax	\$174,374.77	\$125,312.52	\$49,062.2

In making this determination of the Federal estate tax liability of the above-named estate, careful consideration has been given to the protest filed March 8, 1946, and to statements made at conferences held on May 29, 1946, and on November 18, 1946.

Exhibit "A"—(Continued)

A copy of this letter has been mailed to your representative, Mr. Samuel Taylor, 406 Montgomery Street, San Francisco, California.

Adjustments to Net Estate

Net estate for basic tax as disclosed by the return:

Gross estate	\$568,412.27
Deductions	136,938.97

Net estate	\$431,473.30
------------------	--------------

Additions in value of net estate and decreases in deductions:

(a) Stocks and bonds, Schedule B of return	\$ 225.00	
(b) Transfers, Schedule G of return	\$160,800.97	\$161,025.97
		<hr/>
		\$592,499.27

Reduction in value of net estate and increases in deductions	0.00
--	------

Net estate for basic tax as adjusted.....	\$592,499.27
Net estate for additional tax as adjusted	\$632,499.27

Explanation of Adjustments

	Returned	Determined
(a) Stocks and bonds, Schedule B of return		
Item 6—\$4,000.00 Par Value Lehigh Coal and Navigation Co. Cons. 4½% bonds due January 1, 1954.....	\$ 4,120.00	\$ 4,125.00
Item 19—\$5,000.00 Par Value United States Savings Defense Series g-2½% bonds due September 1, 1953.....	\$ 4,780.00	\$ 5,000.00
	<hr/>	<hr/>
Totals	\$ 8,900.00	\$ 9,125.00
Net Increase	\$ 225.00	

The finally determined value of items 6 and 19, as above listed, are based upon the means between the

Exhibit "A"—(Continued)

high and low stock exchange sales prices on the applicable valuation date, in accordance with the provisions of Section 81.10 (c) of Treasury Regulations 105.

	Returned	Determined
(b) Transfers during decedent's life		
Schedule G of return	\$ 0.00	\$160,800.97

The value of the remainder interest in that certain Trust created by decedent as grantor on December 26, 1922, and amended under date of December 26, 1923, is included in the gross estate, it being determined that such transfer was one in which decedent reserved the power to alter, amend, or revoke, and is subject to inclusion in the gross estate under the provisions of section 81.20(b)(1), of Treasury Regulations 105, and that said transfer was intended to take effect at or after decedent's death and is subject to inclusion in the gross estate under the provisions of section 81.17, Regulations 105, as amended.

The portion of the trust assets includable in the gross estate is computed as follows: [14]

Fair market value of trust estate 4-15-1944		\$231,524.64
Less—value of life estate held by Estelle Koshland: Date of birth, 4-8-1878—Age 4-15-1944, 66 years		
Annual income on \$231,524.64 at 4% \$	9,260.99	
Table A factor for \$1.00 annuity at 66..	7.52576	
Annuity value of annual income		
(7.52476 of \$9,260.99)	\$ 69,636.73	
Factor for quarterly payments.....	1.01488	
Value of life tenancy 4-15-1944		
(1.01488 of \$69,636.73)		70,723.67
Value of trust includible in gross estate		\$160,800.97

Exhibit "A"—(Continued)

Computation of Estate Tax

	Returned	Determined
Gross estate	\$568,412.27	\$729,438.24
Deductions (basic tax)	136,938.97	136,938.97
Net estate for basic tax	\$431,473.30	\$592,499.27
Net estate for additional tax	471,473.30	632,499.27
Gross basic tax	\$ 22,124.96	
Credit for state inheritance, etc. tax.....	17,699.97	
Net Basic Tax		\$ 4,424.99
Total gross taxes basic and additional....	\$192,074.74	
Gross basic tax	22,124.96	
Net additional tax		\$169,949.78
Total tax payable		\$174,374.77
Tax shown on return and previously assessed		125,312.52
Deficiency		\$ 49,062.25

EXHIBIT "B"

"THE ABRAHAM KOSHLAND TRUST"
DECLARATION OF TRUST

Know All Men by These Presents, that we, Jesse Koshland and Stanley H. Sinton of Boston in the County of Suffolk and Commonwealth of Massachusetts, hereinafter called the Trustees,

Acknowledge, that we have received from Abraham Koshland the following securities, to wit:

50 Shares Anglo London-Paris Natl. Bank.

200 Shares Natl. Shawmut Bank.

405 Shares American Woolen Co., Pfd.

Exhibit "B"—(Continued)

200 Shares Atchison Topeka & Santa Fe Railway Co.

60 Shares Norfolk & Western Railway Co.

200 Shares Northern Pacific Railway Co.

100 Shares Southern Pacific Railway Co.

100 Shares Pacific Oil Company.

100 Shares Narragansett Electric Lighting.

200 Shares Union Pacific R. R. Co.

\$10,000 6% Bonds of the New York Telephone, Debenture, 1949, numbered 3726-35 incl.

\$20,000 4% Bonds of the Reading Co. & Phila. & Reading Coal Co., 1997, numbered 90266-73 incl., 86853, 86854, 86902, 91274-9 incl. and 80233-5 incl.

\$10,000 4% Bonds of the Southern Pacific RR 1st Ref., 1955, numbered 12348-53 incl., 10184, 91723, 31980, 20543.

\$10,000 4% Bonds of the Central Pacific Co. 1st Ref., 1949, 19429, 79101, 66850-2 incl., 71444-5 incl., 16777, 17501, and 56525.

\$5,000 5% Bonds of the Brooklyn Union Elevated, 1950, numbered 11333-4 incl., 12282, 5047 and 2956.

\$4,000 5% Bonds of the Indiana Steel Co., 1952, numbered 87-8 incl., 8948-9 incl.

\$3,000 5% Bonds of the Ontario Light & Power Co., numbered 11-13 incl.

\$5,000 6% Bonds of the Reno Light & Power Co., numbered 149/53 incl.

\$2,000 6% Bonds of the Rincon Warehouse Co., numbered 289-92 incl. [16]

Exhibit "B"—(Continued)

which together with such other property as may hereafter be acquired or received by us under the terms hereof, we hereby acknowledge, covenant, agree and declare that we hold for the purposes, uses, and trusts and subject to the powers, terms, limitations and duties herein set forth:

First: The Trustees shall have full power and authority at all times to invest and to reinvest the principal of the fund, either in reality or personalty and generally to manage, improve, care for and control the same with all the powers necessary or convenient for such purposes. Without in any way limiting the generality of the foregoing, the Trustees shall have the following powers:

(a) To sell, exchange or transfer any or all and any part or parts of the said principal upon such terms and conditions and in such manner and form as they may deem best, and to execute, acknowledge, deliver and record any deed, contract, proxy, power of attorney, or other instrument relating to the same which they may deem necessary or advisable, and no purchaser, transferee or other person dealing with the Trustees with regard to said principal shall be held to see to the application of money or property paid to the Trustees;

(b) To lease or to manage any or all and any part or parts of the real estate at any time held by them hereunder upon such conditions and on such terms as they deem best;

(c) To mortgage any real estate, or to hypothecate any personal property or otherwise to borrow

Exhibit "B"—(Continued)

money at any time held by them hereunder, to such an extent and upon such terms and conditions as they shall deem best; [17]

(d) To determine all questions whether any money or things coming into their possession shall be treated as principal or income, and to determine the mode in which the expenses incidental to or in connection with the execution of the trust ought to be borne as between principal and income, and to apportion the same as they shall deem just and equitable, and this power shall include, without the generality thereof being hereby restrained, the power to determine in case any investment shall at any time be made at a premium in any bond or security for money or in any wasting investment so called, whether and to what extent and in what manner any part of the actual income of such bond, security or other investment shall be dealt with as principal with a view to prevent the diminution of the trust, and also the power to establish and maintain, in such manner and to such extent as they deem necessary or proper, a sinking fund, or sinking funds to provide for payment or reduction of any mortgage upon any real estate at any time held by them hereunder.

The Trustees may retain in the form received any property, stock, bond or other security given to them hereunder as long as they deem advisable without being liable to any person for such retention.

The Trustees are fully authorized to exercise the powers or authority, whether discretionary or other-

Exhibit "B"—(Continued)

wise, herein given to them through agents or employees appointed by them, and to select and employ suitable agents and employees in and about the execution of the trust, and to pay them reasonable compensation and [18] expenses and also retain reasonable compensation for their own services not to exceed five (5) per cent per annum of the gross income.

The Trustees shall in no event be held liable for any neglect or wrong doing of each other or of such agent or employee provided said trustees exercise good faith in their selection, nor shall the trustees herein be liable for any loss unless it should happen through their own wilful default or neglect.

Second: For and during the lifetime of Estelle W. Koshland of said Boston the income of this trust less proper charges and deductions including the payment of such taxes, municipal, state or Federal as may be levied thereon, shall be paid over unto her semi-annually, quarterly or oftener for and during her lifetime and upon her death then said income shall be paid over unto Abraham Koshland of said Boston, semi-annually, quarterly or oftener for and during his lifetime, and upon the death of the survivor of the said Estelle W. Koshland, and the said Abraham Koshland, said fund shall be divided into two equal parts, and one of said parts shall be held for the use and benefit of each of Stephen A. Koshland and William A. Koshland, sons of the said Estelle W. Koshland and the said Abraham Koshland, upon the following terms

Exhibit "B"—(Continued)

and conditions, to wit: the income to be paid to the guardian of a son during his minority and upon such son attaining the age of twenty-one (21) to pay the said income to him for and during his lifetime. At any time after a son shall have attained the age of twenty-one (21) to pay over to such son from time to time such proportion of the principal of such trust fund as the Trustees may deem best, but not more than one-third ($1/3$) of such principal shall be advanced to [19] him before he reaches the age of thirty (30) years, the balance of the principal may be paid over to him after he attains the age of thirty (30).

Upon the death of a son, to pay over the principal of his share of this fund to the lawful issue of such son in such proportion and such manner and upon such terms as he may by any last will or testamentary instrument direct, and in default of such direction, then to and amongst his issue, or if he leave no issue, then to and amongst such other persons as he shall by any last will or other testamentary instrument direct, and in default of such direction, then to and amongst his heirs-at-law.

Third: Neither said Stephen A. Koshland nor said William A. Koshland shall have any right to anticipate payments of income, nor shall the said Stephen A. Koshland or the said William A. Koshland have any right to assign or transfer any part of the fund or income therefrom to which he may be entitled hereunder, and if any such assignment shall be made, whether voluntary or involuntary,

Exhibit "B"—(Continued)

then in the discretion of the Trustees all right of such assignor may be determined and the share of such beneficiary disposed of in the same manner as if the beneficiary had died at the date of such assignment.

The Trustees shall exercise uncontrolled discretion if in their judgment at any time it is deemed undesirable to pay over the income to any one of the sons of said Estelle W. Koshland and Abraham Koshland to withhold the same and in that event they are authorized under the terms herein to expend the same or any part thereof for the benefit of the sons so entitled to such income, [20] or they may allow such income or any unexpended part thereof to accumulate and add the same to the principal of said fund held for the benefit of such son.

Fourth: At any time or during any period when no income is received, or where the income received is less than Fifteen Thousand (15,000) Dollars in any year, the Trustees may, upon the application of any beneficiary, apply and expend such part of the principal of the fund as may be necessary:

(a) To provide either the said Estelle W. Koshland or the said Abraham Koshland with an income of Fifteen Thousand (15,000) Dollars for such year;

(b) To provide any one of the children of said Estelle W. Koshland and Abraham Koshland with an income of Five Thousand (5,000) Dollars for such year.

Fifth: Upon the death or resignation or inability of the said Jesse Koshland and the said Stanley H.

Exhibit "B"—(Continued)

Sinton to act as Trustees for a period of six (6) months, certified to by the beneficiaries, a new Trustee may be appointed upon the nomination of the said Abraham Koshland for and during his lifetime, and after his death then by the nomination of the said Estelle W. Koshland for and during her lifetime and after the death of the said Estelle W. Koshland and the said Abraham Koshland, then upon the nomination of the two beneficiaries. A written nomination or appointment of such new trustee shall be filed with this Agreement and Declaration of Trust and the new appointee shall in writing accept and upon such written acceptance of his appointment, and [21] the filing thereof with the nomination, shall thereupon, without any further act or conveyance, be vested with all the rights and powers of a Trustee, and subject to all the obligations and duties herein imposed.

Sixth: The Trustees shall keep proper books of account, showing their receipts and disbursements which shall at all reasonable times be open to the inspection of the beneficiaries.

Seventh: Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland, with the approval of the Trustees hereof, at any time in his uncontrolled discretion to amend this Declaration of Trust in any manner whatever, and expressly including the right to limit or change the beneficiaries herein or the share or proportion of any beneficiary.

Eighth: Power is hereby reserved, during th

Exhibit "B"—(Continued)

lifetime of said Abraham Koshland, and given to the said Abraham Koshland at any time in his uncontrolled discretion to terminate this trust and upon such termination, the principal and undistributed income then in the hands of the Trustees shall be distributed to and amongst such person or persons as he shall direct by a written instrument addressed to the Trustees and authority is expressly reserved to the said Abraham Koshland to direct and designate himself as the person entitled to such distribution either in part or in whole of said fund.

Ninth: Each and every one of the powers, purposes and provisions hereof, except as otherwise provided, shall be regarded as separate and distinct from every other power, purpose [22] and provision so that no one shall be limited by reference to or inference from any other, and the enumeration of specific purposes and powers shall not be construed to limit or restrain in any manner the meaning of general terms. If a court of last resort shall decree that any of the powers, purposes, or provisions hereof are invalid, this shall not in any wise limit any other power, purpose or provision hereinbefore granted, but only such power, purpose or provision so decreed to be invalid shall be limited, and all other powers, purposes and provisions herein granted, shall be unmodified thereby.

Tenth: Unless requested in writing by the beneficiaries neither the original Trustees nor any successor Trustee or Trustees shall be required to give surety or sureties upon a bond for the faithful per-

Exhibit "B"—(Continued)

formance of the trust hereby imposed upon them; but upon such written request of the beneficiaries, the Trustees shall, at the expense of the Estate, furnish a surety Company bond conditional on the faithful performance of their duties as Trustees in a sum not less than the amount of the fund.

Eleventh: The Old Colony Trust Company of Boston is hereby named as the depository with whom this Declaration of Trust shall be filed and authority is hereby given to the Trustees to change the depository and from time to time designate the successor depository.

Twelfth: This Trust shall be designated as The "Abraham Koshland Trust."

In Witness Whereof we hereunto set our hands and seals [23] this 26th day of December, 1922, to this instrument executed in five (5) duplicate original copies.

/s/ JESSE KOSHLAND

/s/ STANLEY H. SINTON.

Commonwealth of Massachusetts,
Suffolk—ss.

December 26th, 1922

Then personally appeared Jesse Koshland and Stanley H. Sinton and acknowledged the foregoing to be his free act and deed.

Before me,

(Seal) /s/ THOMAS H. DUCEY,
Notary Public.

My commission expires March 29, 1923.

[Endorsed]: T.C.U.S. Filed Mar. 23, 1948. [24]

EXHIBIT "C"

ABRAHAM KOSHLAND TRUST
MEMORANDUM OF DECLARATION OF
TRUST

Whereas by a certain Declaration of Trust dated December 26, 1922, Jesse Koshland and Stanley H. Sinton acknowledged the receipt of certain securities from Abraham Koshland of Boston, in the County of Suffolk of Commonwealth of Massachusetts, upon the terms in said Declaration of Trust contained, which amongst other things provided Article 7 and Article 8, as follows:

"Seventh": Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland, with the approval of the Trustee hereof, at any time in his uncontrolled discretion to amend this Declaration of Trust in any manner, whatever, and expressly including the right to limit or change the beneficiaries herein or the share or proportion of any beneficiary.

"Eighth: Power is hereby reserved, during the lifetime of said Abraham Koshland, and given to the said Abraham Koshland at any time in his uncontrolled discretion to terminate this trust and upon such termination, the principal and undistributed income then in the hands of the Trustees shall be distributed to and amongst such person or persons as he shall direct by a written instrument addressed to the Trustees, and authority is expressly reserved to the said Abraham Koshland to direct and designate himself as the person entitled

Exhibit "C"—(Continued)

to such distribution either in part or in whole of said fund."

Now, Therefore, Know All Men by These Presents that I, Abraham Koshland, by virtue of the power to me given by said provisions and any other provisions of said Declaration of Trust me hereunto enabling, do hereby amend said Declaration of Trust in the following manner and particulars, to wit:

I do hereby amend said Declaration of Trust by cancelling said Articles 7 and 8 and substitute in place thereof the following Articles 7 and 8, which said new articles shall be incorporated [25] in said original Declaration of Trust and be of the same force and effect as if originally written in and made part of the original Declaration of Trust in place of the Articles 7 and 8 as originally written:

"7. Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland and Estelle W. Koshland with the approval of the Trustees hereof at any time in the uncontrolled discretion of the said Abraham Koshland and Estelle W. Koshland to amend the declaration of Trust, and if during the lifetime of the said Abraham Koshland the said Estelle W. Koshland shall not be living, then any one of the sons of the said Abraham Koshland and the said Estelle W. Koshland, who is a beneficiary under the said Declaration of Trust, may exercise in conjunction with the said Abraham Koshland the power of amendment in place of, and in substitution for, said

Exhibit "C"—(Continued)

Estelle W. Koshland, with the same force and effect as if the son so joining in such amendment had been originally and specifically named in the place and stead of said Estelle W. Koshland.

8. This trust shall be irrevocable.

In Witness Whereof I, Abraham Koshland, hereunto set my hand and seal this 26th day of December, 1923.

(Seal) /s/ ABRAHAM KOSHLAND.

We, Jesse Koshland and Stanley H. Sinton, hereby acknowledge receipt of the within amendment to the Declaration of Trust made by us December 26, 1922, and approve of the same and hereby accept and agree to the same as part of the original Declaration of Trust under and in accordance with the provisions of the original Trust Instrument.

In Witness Whereof we hereunto set our hands and seals this 26th day of December, 1923.

(Seal) JESSE KOSHLAND

(Seal) STANLEY H. SINTON. [26]

Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended peti-

tion in the above proceeding, admits and denies as follows:

1 to 3, inclusive. Admits the allegations contained in paragraphs 1 to 3, inclusive, of the amended petition.

4 (1) to (5), inclusive. Denies the allegations of error contained in subparagraphs (1) to (5), inclusive, of paragraph 4 of the amended petition.

5 (1) to (5), inclusive. Admits the allegations contained in subparagraphs (1) to (5), inclusive, of paragraph 5 of the amended petition.

(6) and (7). Denies the allegations contained in subparagraphs (6) and (7) of paragraph 5 of the amended petition. [27]

(8). Admits that the Commissioner in his deficiency notice Exhibit A, based the value of said life estate on an annual income of \$9,260.99 and upon a Table A factor for a one dollar annuity at age 66 of 7.52476, and upon a factor for quarterly payments of 1.01488, and that the use of said Table A factor and said factor for quarterly payments are provided for in Regulations 105, Section 81.10(i) denies the remaining allegations contained in subparagraph (8) of paragraph 5 of the amended petition.

(9) and (10). For lack of sufficient information as to the truth and correctness thereof, denies the allegations contained in subparagraphs (9) and (10) of paragraph 5 of the amended petition.

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel
for Respondent.
Of Counsel:

B. H. NEBLETT,
Division Counsel,
T. M. MATHER,
A. J. HURLEY,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed March 23, 1948. [28]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby Stipulated by and between counsel for the petitioner and counsel for the Commissioner in the above-entitled case that the following facts may be taken as true in said case:

1. The petitioner is an estate of the decedent. The decedent, Abraham Koshland, died on April 15, 1944, and his estate is being probated in the Superior Court of the State of California, in and for the City and County of San Francisco. Jesse Koshland is the duly appointed, qualified and acting executor of said estate.

2. The notice of deficiency, a copy of which is attached to the petition in this case and incorporated

by reference herein as Exhibit A, was mailed to petitioner on or about April 7, 1947. [29]

3. The estate tax return of petitioner was filed with the Collector of Internal Revenue for the First District of California, in San Francisco, California, on May 24, 1945, and the amount shown as due thereon was paid to said Collector at said time. A true and correct copy thereof is attached hereto as Exhibit A(1) and incorporated by reference herein.

4. On December 26, 1922, the decedent, Abraham Koshland, created a trust by transferring certain securities to Jesse Koshland and Stanley H. Sinton, who declared themselves trustees thereof. A true and correct copy of said trust is attached to the petition in this case as Exhibit B and is incorporated in and by reference made a part of this stipulation as Exhibit B. Decedent transferred to said trust securities having a cost to him of \$290,596.

5. On or about December 26, 1923, the decedent amended said trust. A true and correct copy of said amendment is attached to the original petition in this case as Exhibit C and is incorporated in and by reference made a part of this stipulation as Exhibit C.

6. There have always been two trustees of said trust. The names of said trustees and the periods of their trusteeship have been as follows:

Jesse Koshland, Stanley H. Sinton: December 26 1922, to June 26, 1929 (Jesse Koshland continued as trustee until May 1, 1945). [30]

Jesse Koshland, Robert J. Koshland: June 26

1929, to March 6, 1944, (Jesse Koshland continued as trustee until May 1, 1945).

Jesse Koshland, Edgar Sinton: March 6, 1944, to May 1, 1945 (Edgar Sinton continued as trustee until September 28, 1945).

Edgar Sinton, Stephen A. Koshland: May 1, 1945, to September 28, 1945 (Stephen A. Koshland has continued as trustee to date).

Stephen A. Koshland, William A. Koshland: September 28, 1945, to date.

William A. Koshland and Stephen A. Koshland are the sons of Abraham Koshland and Estelle W. Koshland. Jesse Koshland is the brother of Abraham Koshland and the brother-in-law of Estelle W. Koshland. Stanley H. Sinton, Robert J. Koshland and Edgar Sinton are the nephews of Abraham Koshland and Estelle W. Koshland.

7. At the time of the creation of said trust, Exhibit B, and for many years prior thereto and for the period subsequent thereto until April 15, 1944, the date of his death, the decedent, Abraham Koshland, and Estelle W. Koshland were husband and wife.

8. The decedent, Abraham Koshland, was born on March 22, 1869, and died on April 15, 1944. He was 75 years of age at the time of his death. Estelle W. Koshland was born April 8, 1878, and is still living. She was 66 years of age at the date of decedent's death. [31]

9. The decedent and Estelle W. Koshland had

two children, Stephen A. Koshland, who was born on February 21, 1902, and was 42 years old at the date of his father's death, and William A. Koshland, who was born on November 9, 1906, and was 37½ years old at the date of the death of his father. Both children are still living. William A. Koshland never married. Stephen A. Koshland married on April 14, 1938, and his wife is still living and married to him. They have had two children, Anthony S. Koshland born on March 26, 1940, who was four years old at the time of decedent's death, and Kathryn Koshland born on July 16, 1943, who was under one year of age at the time of decedent's death. Both of said children are still living.

10. Said trust has filed its income tax return and kept its books on a calendar year basis. Its net income from all sources (and whether taxable or tax-exempt) for the calendar years 1923 to 1947, inclusive, has been as follows:

Calendar Year	Income
1923	\$22,301.76
1924	20,632.42
1925	17,843.47
1926	19,157.14
1927	20,493.97
1928	20,449.60
1929	20,203.76
1930	21,230.32
1931	19,945.51
1932	13,627.21
1933	10,211.29

Calendar Year	Income
1934	\$10,628.15
1935	10,937.23
1936	13,032.43
1937	13,579.43
1938	10,705.74
1939	11,152.10
1940	11,459.93
1941	12,534.69
1942	11,200.17
1943	10,900.58
1944	11,835.84
1945	11,332.21
1946	11,292.89
1947	11,763.30

11. All of said income has been paid year by year to Estelle W. Koshland. From the creation of said trust through December 31, 1947, she has never made any application to the trustees for the application of any part of the principal of the trust in order to provide her with an income of \$15,000 for any year.

12. The fair market value of the trust estate as of the date of death, April 15, 1944, was \$231,524.64.

13. The transfer made by Abraham Koshland in trust (Exhibit B) was not made in contemplation of death.

14. On or about September 20, 1946, \$30,000 was paid by the petitioner to the Collector of Internal Revenue in San Francisco on account of additional estate tax claimed to be due, and on or about May

9, 1947, an additional amount of \$19,062.25 was paid by petitioner to [33] said Collector on account of additional estate tax claimed to be due. On or about June 9, 1947, a claim for refund was filed with the Collector of Internal Revenue in San Francisco by the petitioner. A true and correct copy of said claim for refund is attached hereto and incorporated by reference herein as Exhibit D.

15. It is stipulated that upon recomputation under Rule 50 following the opinion of this Court in this proceeding the petitioner may receive credit up to the full 80 per cent against the basic estate tax for any additional state inheritance, estate legacy or succession taxes which are paid as a result of this proceeding.

Dated: March, 1948.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON.

Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Commissioner.

[Endorsed]: T.C.U.S. Filed March 23, 1948. [34

[Title of Tax Court and Cause.]

MOTION TO AMEND RECORD

It is hereby moved by counsel for the petitioner in the above-entitled case that the record in said case be amended so as to include the facts stated in the stipulation of facts dated April 27, 1948, attached hereto and made a part hereof.

In said stipulation counsel for the petitioner and counsel for the Commissioner in the above-entitled case agree that the facts contained therein may be taken as true in said case and that the transcript of the proceedings in said case may be amended so as to include the facts stated therein.

Dated: San Francisco, California, May 3, 1948.

/s/ SAMUEL TAYLOR,

Counsel for the Petitioner.

Granted May 6, 1948.

/s/ JOHN W. KERN,

Judge.

Served May 7, 1948.

[Endorsed]: T.C.U.S. Filed May 5, 1948. [35]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby Stipulated by and between counsel for the petitioner and counsel for the Commissioner in the above-entitled case that the following facts may be taken as true in said case and that the transcript of the proceedings in this case may be

amended so as to include the facts stated in this stipulation:

The only amendment to the trust created by Abraham Koshland on December 26, 1922, Exhibit B to the stipulation of facts heretofore filed in this case, was the amendment made on or about December 26, 1923, Exhibit C to said stipulation of facts. No other amendments to said trust, Exhibit B, have ever been made.

Dated: April 27, 1948.

/s/ SAMUEL TAYLOR,
Counsel for the Petitioner.

/s/ CHARLES OLIPHANT,
Counsel for Commissioner.

[Endorsed]: T.C.U.S. Filed May 6, 1948. [36]

11 T. C. No. 109

The Tax Court of the United States

Estate of Abraham Koshland, Deceased, Jesse Koshland, Executor, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Docket No. 13780. Promulgated November 30, 1948.

Decedent in 1922 created a trust which he later amended in 1923. The unrestricted power was retained in the decedent, as settlor, in conjunction with his wife, the life beneficiary, to alter and amend the trust.

1. Held: the value of the remainder interest

transferred is includable in decedent's gross estate under Section 811(d)(2) of the Code, decedent's wife having no substantial adverse interest in remainders.

Held, further: that the application of Section 811(d)(2) in the present proceeding does not violate the due process clause of the fifth amendment of the Constitution.

2. In computation of the value of the includable remainder interests,

Held: petitioner has not shown error in respondent's use of the Actuaries or Combined Experience Table included in his Regulations.

Held, further: no error shown in respondent's use of the factor set forth in the Regulations applicable to quarterly payments.

Samuel Taylor, Esq., Edgar Sinton, Esq., and Bernard Shapiro, Esq., for the petitioner.

A. J. Hurley, Esq., for the respondent. [37]

Respondent determined a deficiency in the estate tax of petitioner in the sum of \$49,062.25. Practically all of this deficiency results from the inclusion by respondent in the decedent's gross estate of the value, as determined by him, of the remainder in a trust created by decedent in 1922. The reasons given by respondent for such inclusion are that the decedent reserved the power to alter, amend, or revoke as to the remainder interests in the trust, and that the transfer to the trust was intended to take effect at or after decedent's death. Petitioner alleges that respondent erred in including such interests in decedent's gross estate, and, in the alter-

native, that the respondent's valuation of such interests was too high. Petitioner also alleges that respondent erred in not allowing full credit for state inheritance taxes paid or payable, and in not allowing petitioner a deduction for legal fees as a result of this proceeding. As to the last two issues, the first is covered by the stipulation of the parties hereinafter referred to, and the second was not made the subject of any testimony.

At the hearing herein a stipulation of facts was filed by the parties. In addition oral and documentary evidence was introduced.

FINDINGS OF FACT

We find the facts to be as stipulated by the parties, and set out herein a resume of those facts stipulated, together with our findings based upon the evidence adduced at the hearing.

The decedent died on April 15, 1944, and his estate is in the process of administration in California. The estate tax return of the petitioner [38] estate was filed with the collector of internal revenue for the first district of California. At the time of his death decedent was 75 years old, and his wife, Estelle W. Koshland, who was still living at the time this case was tried, was 66 years old. She had been his wife for many years prior to 1922. They had two sons, both of whom are living. One, Stephen A. Koshland, was born in 1902, and the other, William A. Koshland, was born in 1906. The older son married in 1938. He and his wife have two children, one born in 1940 and the other in 1943.

Decedent also had a brother, Jesse Koshland, with whom he had very close personal and business contacts until his (the decedent's) death.

On December 26, 1922, the decedent created a trust by transferring certain securities, which had a cost to him of \$290,596, to Jesse Koshland and Stanley H. Sinton (a nephew) who declared themselves trustees of this property in a declaration of trust, the pertinent provisions of which read as follows:

Second: For and during the lifetime of Estelle W. Koshland of said Boston the income of this trust less proper charges and deductions including the payment of such taxes, municipal, state or Federal as may be levied thereon, shall be paid over unto her semi-annually, quarterly or oftener for and during her lifetime and upon her death then said income shall be paid over unto Abraham Koshland of said Boston, semi-annually, quarterly or oftener for and during his lifetime, and upon the death of the survivor of the said Estelle W. Koshland, and the said Abraham Koshland, said fund shall be divided into two equal parts, and one of said parts shall be held for the use and benefit of each of Stephen A. Koshland and William A. Koshland, sons of the said Estelle W. Koshland and the said Abraham Koshland, upon the following terms and conditions, to wit: the income to be paid to the guardian of a son during his minority and upon such son attaining the age of twenty-one (21) to pay the said income to him for and during his lifetime. At any time after a son shall have attained the age of twenty-one (21) to pay over to such son from time to time such pro-

portion of the principal of such trust [39] fund as the Trustees may deem best, but not more than one-third ($1/3$) of such principal shall be advanced to him before he reaches the age of thirty (30) years, the balance of the principal may be paid over to him after he attains the age of thirty (30).

Upon the death of a son, to pay over the principal of his share of this fund to the lawful issue of such son in such proportion and such manner and upon such terms as he may by any last will or testamentary instrument direct, and in default of such direction, then to and amongst his issue, or if he leave no issue, then to and amongst such other persons as he shall by any last will or other testamentary instrument direct, and in default of such direction, then to and amongst his heirs-at-law.

Third: Neither said Stephen A. Koshland nor said William A. Koshland shall have any right to anticipate payments of income, nor shall the said Stephen A. Koshland or the said William A. Koshland have any right to assign or transfer any part of the fund or income therefrom to which he may be entitled hereunder, and if any such assignment shall be made, whether voluntary or involuntary, then in the discretion of the Trustees all right of such assignor may be determined and the share of such beneficiary disposed of in the same manner as if the beneficiary had died at the date of such assignment.

The Trustees shall exercise uncontrolled discretion if in their judgment at any time it is deemed undesirable to pay over the income to any one of the sons

of said Estelle W. Koshland and Abraham Koshland to withhold the same and in that event they are authorized under the terms herein to expend the same or any part thereof for the benefit of the sons so entitled to such income, or they may allow such income or any unexpended part thereof to accumulate and add the same to the principal of said fund held for the benefit of such son.

Fourth: At any time or during any period when no income is received, or where the income received is less than Fifteen Thousand (15,000) Dollars in any year, the Trustees may, upon the application of any beneficiary, apply and expend such part of the principal of the fund as may be necessary:

(a) To provide either the said Estelle W. Koshland or the said Abraham Koshland with an income of Fifteen Thousand (15,000) Dollars for such year;

(b) To provide any one of the children of said Estelle W. Koshland and Abraham Koshland with an income of Five Thousand (5,000) Dollars for such year.

Fifth: Upon the death or resignation or inability of the said Jesse Koshland and the said Stanley H. Sinton to act as Trustees for a period of six (6) months, certified to by the beneficiaries, a new Trustee may be appointed upon the nomination of the said Abraham Koshland for and during his lifetime, and after his death [40] then by the nomination of the said Estelle W. Koshland for and during her lifetime and after the death of the said Estelle W. Koshland and the said Abraham Koshland, then upon the nomination of the two beneficiaries. A

written nomination or appointment of such new trustee shall be filed with this Agreement and Declaration of Trust and the new appointee shall in writing accept and upon such written acceptance of his appointment, and the filing thereof with the nomination, shall thereupon, without any further act or conveyance, be vested with all the rights and powers of a Trustee, and subject to all the obligations and duties herein imposed.

Sixth: The Trustees shall keep proper books of account, showing their receipts and disbursements which shall at all reasonable times be open to the inspection of the beneficiaries.

Seventh: Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland, with the approval of the Trustees hereof, at any time in his uncontrolled discretion to amend this Declaration of Trust in any manner whatever, and expressly including the right to limit or change the beneficiaries herein or the share or proportion of any beneficiary.

Eighth: Power is hereby reserved, during the lifetime of said Abraham Koshland, and given to the said Abraham Koshland at any time in his uncontrolled discretion to terminate this trust and upon such termination, the principal and undistributed income then in the hands of the Trustees shall be distributed to and amongst such person or persons as he shall direct by a written instrument addressed to the Trustees and authority is expressly reserved to the said Abraham Koshland to direct and designate himself as the person entitled to such

distribution either in part or in whole of said fund.

Ninth: Each and every one of the powers, purposes and provisions hereof, except as otherwise provided, shall be regarded as separate and distinct from every other power, purpose and provision so that no one shall be limited by reference to or inference from any other, and the enumeration of specific purposes and powers shall not be construed to limit or restrain in any manner the meaning of general terms. If a court of last resort shall decree that any of the powers, purposes, or provisions hereof are invalid, this shall not in any wise limit any other power, purpose or provision hereinbefore granted, but only such power, purpose or provision so decreed to be invalid shall be limited, and all other powers, purposes and provisions herein granted, shall be unmodified thereby.

On December 26, 1923, decedent, for the first and only time, amended [41] this trust. The amendment cancelled Articles 7 and 8 of the original declaration of trust and substituted therefor the following:

7. Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland and Estelle W. Koshland with the approval of the Trustees hereof at any time in the uncontrolled discretion of the said Abraham Koshland and Estelle W. Koshland to amend this declaration of Trust, and if during the lifetime of the said Abraham Koshland the said Estelle W. Koshland shall not be living, then any one of the sons of the said Abraham Koshland and the said Estelle W. Koshland, who is a beneficiary under the

said Declaration of Trust, may exercise in conjunction with the said Abraham Koshland the power of amendment in place of, and in substitution for, said Estelle W. Koshland, with the same force and effect as if the son so joining in such amendment had been originally and specifically named in the place and stead of said Estelle W. Koshland.

8. This trust shall be irrevocable.

Since the creation of the trust, two individuals closely related to decedent have served as trustees. Since September 28, 1945, the two trustees have been decedent's sons.

All of the income of this trust has been paid year by year to Estelle W. Koshland. Prior to 1931 this income was in excess of \$15,000 annually. Since then, it has fluctuated between \$10,000 and \$14,000. Although she has not made any application to the trustees for the payment from trust principal of any amount necessary to bring her income to the sum of \$15,000, it was the intent of the decedent and the understanding of the trustees that she have this right; and it is conceded by respondent on brief that she is and was entitled to an annual income from the trust in the amount of \$15,000.

At the time of decedent's death, as well as at the time of the hearing [42] in this proceeding (March 23, 1948) decedent's wife was in good health, and her personal physician expected her to live out her normal life expectancy.

Decedent's power of amendment of the trust was unrestricted and was exercisable by him with a per-

son not having a substantial adverse interest in the remainder.

The fair market value of the trust estate, as of the date of decedent's death, was \$231,524.64.

In determining the value of the remainder interest, which respondent contends is includable in decedent's gross estate, he subtracted from the value of the trust estate, the value of decedent's wife's life estate, calculating this value in conformity with Table A appearing in Regulations 105, section 81.10 (i). This table is based upon The Actuaries' or Combined Experience Table of Mortality.

This table is the result of experience of seventeen British life insurance companies covering a period from 1762 until 1837; it makes no distinction between the length of male lives and the length of female lives.

Many other tables of mortality have been in widespread use. The Actuaries' or Combined Experience Table of Mortality is not now used by insurance companies in computing annuities. Insurance companies do not use annuity mortality tables in determining life insurance premiums or in calculating life insurance reserves. Annuity mortality tables reflect only the experience of insurance companies with annuitants as a class. [43] They do not purport to reflect the general mortality experience. Annuitants, as a rule, are a self-selected group and tend to outlive the average. For the purpose of computing life insurance premiums, insurance companies use their own mortality tables based upon their individual experience.

Modern experience has demonstrated that females live longer than males, and some annuity tables now do take this factor into account.

The 1937 Standard Annuity Table has been used by insurance companies and by actuaries as a basis for determining annuities and life estates since 1937. The table is used for both male and female lives, except that the age of the female is taken at an age five years younger than the male life. It is one of the most current tables in use for the evaluation of annuities.

The table currently used by insurance companies for purposes of reserves and the like and considered as reflecting general mortality experience is the Insurance Commissioners' 1941 Standard Ordinary Table of Mortality. This table is based upon experience in the years 1934 to 1936, with adjustment for possible epidemics and other catastrophes.

Decedent's wife's expectation of life, under various mortality tables, is as follows:

Mortality Table	Age 66
Combined Experience or Actuaries'.....	10.46
American Experience	10.54
Insurance Commissioners' 1941 Table.....	11.01
American Annuitants'	11.95
Combined Annuity—	
Male	12.17
Female	14.52
1937 Standard Annuity—	
Male	13.81
Female	16.90
The proper factor for quarterly payments is	

1.01488, to be multiplied by the annuity value of the annual payments to Estate of Koshland under the trust.

The Value of the trust remainder, includable in decedent's gross estate, is \$116,973.71.

OPINION

Kern, Judge: The principal issue in this proceeding is whether the value of the remainder interest in the trust created and amended prior to 1924 is includable in decedent's gross estate. One of the grounds urged by respondent for inclusion is that the transfer was one in which the decedent reserved the power to alter and amend the trust within the meaning of section 811 (d) of the Internal Revenue Code¹ and the applicable regulations.² Petitioner

¹ Sec. 811. Gross Estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States. * * *

(d) Revocable Transfers. * * *

(2) Transfers on or Prior to June 22, 1936.—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, * * *

² Regulations 105. Sec. 81.20. Transfers with power to change the enjoyment.

seeks to meet this argument by a three-fold attack. First, it is urged that after the 1923 amendments to the trust the right to amend further encompassed only slight and trivial matters; secondly, that the right to amend was in conjunction with decedent's wife, who had a substantial adverse interest in the remainder of the trust; and, thirdly, that the law and regulations may not be constitutionally applied to pre-1924 transfers.

Petitioner's first point is without merit. The trust instrument, as amended, contains a broad sweep of power. It was provided:

7. Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland and Estelle W. Koshland with the approval of the Trustees hereof at any time in the uncontrolled discretion of the said Abraham Koshland and Estelle W. Koshland to amend this declaration of Trust. * * *

therein transferred as described in subsection (a) shall be included in the gross estate if it comes within any one of the following paragraphs:

(1) If the transfer was made prior to the enactment of the Revenue Act of 1924 (4:01 p.m., eastern standard time, June 2, 1924), and the power was reserved at the time of the transfer and was exercisable by the [45] decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of them held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and to the extent of any adverse interest which was not substantial.

Petitioner would have us construe this language narrowly, since certain provisos appearing in the paragraph prior to amendment were deleted. Rather than an aid to petitioner's view, these omissions can be interpreted as clothing decedent with as broad a power as it was possible to accord him. In any event, the mere fact that no limitations appear cannot be said to diminish the general power granted.

None of the cases cited to us by petitioner, of which *Theopold, Exr., v. United States*, (CCA-1), 164 Fed. (2d) 404, is an example, are in point, as none contained as general a power of amendment as retained by this decedent. In the *Theopold* case, the power was limited to amend the trust instrument only "so that it will more clearly express my actual intentions * * *." The Circuit Court recognized that the trust instrument was inexpertly drawn and the trustor wished to retain the power to settle meaning. It is further observed:

* * * Certainly if he had wished to retain broad powers of amendment as to substance he could have said so very simply by merely reserving a general power to alter, amend or revoke. * * * Such a general power as referred to by the court was here retained.

Petitioner next contends that, irrespective of the scope of the power of amendment, it could not be exercised except in conjunction with a person having a substantial adverse interest. This raises the question of whether the life tenant, decedent's wife,

can be said to have a substantial adverse interest in the remainder.³ We believe that she did not.

Petitioner's argument, with which we can not agree, is that decedent's wife had a substantial adverse interest in the remainder, since she possessed the right during her lifetime to have corpus invaded if it became necessary to assure her the receipt of \$15,000 annually, and it was to her benefit to retain her sons as remaindermen. This approach loses sight of the meaning and significance of the "substantial adverse interest" concept. See *Flood v. United States*, (CCA-1), 133 Fed. (2d) 173; *Union Trust Company of Pittsburgh, Admr., v. Driscoll*

³ The question of whether the decedent's wife had a substantial adverse interest in this pre-1924 inter vivos transfer becomes important under the established doctrine of *Reinecke v. Northern Trust Co.* 278 U. S. 339. It was there recognized that a transfer in trust, where the settlor reserved to himself alone or to himself with a person having a non-adverse interest, was not a completed transfer because the property did not pass completely out of his control until his death, and as such was includable in the decedent's gross estate even prior to the enactment of the Revenue Act of 1924. The taxing statute is not unconstitutional as to trusts created prior to its enactment if the transfers thereunder are incomplete. *Chase National Bank v. United States*, 27 U. S. 327. Section 302(d) of the Revenue Act of 1924 first introduced the provision that if the settlor in conjunction with any person reserved the right to revoke or otherwise materially change the transferred interests, the conveyance was taxable. As to transfers after that date, the "substantial adverse interest" requirement is immaterial. *Helvering v. City Bank Farmers Trust Co.*, 296 U. S. 85. [47]

(CCA-3), 138 Fed. (2d) 152, certiorari denied, 321 U. S. 764.

Petitioner relies principally upon *Commissioner v. Kaplan*, (CCA-1), 102 Fed. (2d) 329, and seeks to distinguish *David J. Lit, et al., Executors*, 28 B.T.A. 853, affirmed, 72 Fed. (2d) 551, and *Estate of Charles M. Thorp*, 7 T. C. 921, affirmed, 164 Fed. (2d) 966, certiorari denied, 333 U. S. 843. In the *Kaplan* case, decedent created a trust in 1923, of which he was trustee and his wife life beneficiary, with remainders over after his and his wife's deaths to their children. The trust could be amended and revoked "by the Trustees," assented to by the life beneficiary. Under these facts, it was held that decedent's wife had a substantial adverse interest in the remainder, and hence it was not includable in decedent's gross estate. Among the reasons assigned to support this conclusion was the following:

In this connection it is to be noted that Mr. Kaplan [decedent] as an individual reserved no right of revocation but rather granted these rights to the trustee then in office. This fact, if not controlling, supports the conclusion that the trust was, when made, a fully completed transfer of all interests in the trust estate. * * * [48]

The Circuit Court distinguished the *Lit* case:

Lit et al. v. Commissioner of Internal Revenue, 3 Cir., 72 F. 2d 551, relied upon by the petitioner, was a case where the remainder interest was held properly included, the trust instrument reserving in the settlor the right of revocation with the assent of the life beneficiary. Apart from the distinguishing fact

that the donor expressly reserved the right of revocation, it appears, also, that the trust was created in 1927 and the Revenue Act of 1926, sec. 302(d), 44 Stat. 71, was applied. * * *

In the Lit case, the decedent in 1927 created a trust, the income of which was to be paid to his wife for life, and after the death of both, remainders were given to others. The power of amendment and revocation was retained by decedent in his individual capacity, in which his wife was required to join. It was there held that the value of the life estate vested in the wife should not be included as part of decedent's gross estate, but the remainder interest was includable; the wife was said to have a non-adverse interest in the remainder, and trust was deemed revocable within the meaning of Section 302(d) of the Revenue Act of 1926. It was there said by us:

* * * All that the settlor had to do in order to exercise this reserved power of revocation as to David Jack Lit was to do it in conjunction with Rosa L. Lit [his wife], who was in no sense an adverse interest as to the remainder interest of the trust estate. * * *

While it is true that in the Porter case the settlor of the trust was left free to exercise the limited power which he reserved, alone and without having to secure the consent of any one, whereas in the instant case the settlor must secure the written consent of his wife, Rosa L. Lit, still, as we have already stated, Rosa L. Lit had no interest in the remainder interest and as to that she was not an ac

verse interest and we think these facts bring the situation as to the remainder interest within the purview of the language of section 302 (d). * * *

The Lit case was cited approvingly by us in the Thorp case, and by the Circuit Court in its affirmance. There, decedent created a trust in 1918, reserving the power in himself to terminate the trust cutting off the [49] remainder interest upon the request of the life beneficiaries. We held that the value of the transferred remainder interest was includable in decedent's gross estate under Section 811(d)(2) of the Internal Revenue Code. The Circuit Court, in its affirmance, stated:

* * * On the question whether the interests of the five children were "substantially adverse," the Tax Court said, "Here the persons in whom the right to terminate was reserved were obviously not adversely interested in the exercise of that right as to the remainder—which is the only matter basing the present controversy." Bearing in mind that by exercising their power of termination the children would have received "absolute property" in the corpus, rather than merely the income therefrom, and also the fact that there was a close family relationship, we are not prepared to say that the Tax Court erred in choosing from conflicting inferences the conclusion that their interests were not "substantially adverse." * * *

Taxpayer's further contention that a beneficiary of a trust is "adverse to the grantor * * * regardless of whether a change would benefit or injure him" not only rejects the ordinary meaning of the

word "adverse," but also meets such insurmountable obstacles as *Helvering v. City Bank Co.*, *supra* at page 90, and the express language of the Tax Court in *Lit. v. Commissioner*, 28 B.T.A. 853, 860-861 (1933), affirmed by this court in 72 F.2d 551 [14 AFTR 481] (1934). * * *

Such cases as *Estate of Frederick S. Fish*, 45 B.T.A. 120, where the life tenant had also a power of appointment over the remainder interest, and *Mackay, et al., Executors, v. Commissioner*, (CCA-2) 94 Fed. (2d) 558, reversing 33 B.T.A. 765, holding that a remainderman has an adverse interest in the life estates, cited to us by petitioner, are clearly distinguishable and are not in point.

Since we hold that decedent reserved to himself the power of amendment with a person whose interest was non-adverse as to that portion of the trust property sought to be included in decedent's gross estate, petitioner's constitutional argument, based upon the application of the law and [50] regulations to pre-1924 transfers disappears. *Estate of Charles M. Thorp, supra*. Cf. *Commissioner v. Kaplan, supra*; *Union Trust Company of Pittsburgh Adm., v. Driscoll, supra*.

In view of our decision that the remainder interest is includable in decedent's gross estate, under Section 811(d), it becomes unnecessary to decide whether it is also includable under 811(c) of the Code. There does remain, however, one further question, i.e., the value of the interest to be included.

The parties have stipulated the fair market value of the trust estate as of the date of death. The ar-

of disagreement is as to the value of the life interest which is to be subtracted. Petitioner contends that it is unsound to determine such value in conformity with respondent's regulations,⁴ as they are based upon an absolute mortality table, and further that an improper factor for quarterly payment is therein employed. The burden of proving these contentions is upon petitioner. *Estate of Charles H. Hart*, 1 T.C. 989; *Estate of Koert Bartman*, 10 T.C. 1073.

The questions petitioner raises are not new. *Estelle May Affelder*, 7 T.C. 1190; *Henry F. Du Pont*, 2 T.C. 246. We have carefully considered all of the evidence introduced by petitioner. It is of the same purport as that presented by taxpayers in some of the earlier cases, and we must conclude that petitioner has not borne the burden of proof on either point.

An actuarial expert called by petitioner testified as to the history of various mortality tables, and then expressed the opinion that if he had his choice of the table to be used to value the life estate he would select [51] the 1937 Standard Annuity Table. This table shows a life expectancy for decedent's wife of over six years more than the table embodied in respondent's regulations, and about five years more than the table approved in *Anna L. Raymond*, 40 B.T.A. 244, affirmed, 114 Fed. (2d) 140, certiorari denied, 311 U. S. 710, a case upon which petitioner chiefly relies. It should be observed that the latest mortality table presented indicates a

⁴ Regulations 105, Section 81.10(i).

life expectancy of 11.01 years for decedent's wife as compared to 10.46 years in the table incorporated in respondent's regulations.

The table petitioner urges might be worthy of further consideration if our question were the cost of an annuity from a commercial insurance company. This was the underlying problem posed in the Raymond case, and it was there considered proper to utilize a table that such companies were using in their annuity business. We observed in the Bartman case, *supra*:

* * * that insurance companies take into consideration the element of self selection in writing annuities; and that they use whatever tables are best suited for their particular needs. * * *

There is no showing here that the mortality of inheritors or donees closely resembles that of purchasers of annuity policies. In fact, contrary evidence appears in the record.

Whatever may be the shortcomings of the table used by respondent, cf. concurring opinion of Mellott, Jr., in *Henry F. Du Pont, supra*, petitioner has not convinced us that the 1937 table or any other table, not embodied in respondent's regulations, must be applied in this proceeding, or that respondent's use of the Combined Experience Table in this proceeding is erroneous. *Estelle May Affelder, Estate of Koert Bartman, both supra*. [52]

Even greater weakness pervades petitioner's argument as to the proper factor for quarterly payments. The actuarial expert testified that the factor respondent used was proper if only an annuity for

a term certain were involved, but was not correct if the annuity were for life. He testified further that the value of a life annuity, payable quarterly, is less than the value of an annuity certain, payable quarterly, for a term equal to the annuitant's life expectancy. Yet the factor petitioner urges and the method of its application lead to a higher value for a life annuity. This discrepancy could not be adequately explained by petitioner, nor was there any significant evidence as to the derivation of the factor it sought to have us apply. Petitioner's view cannot be sustained. *Estelle May Affelder, supra.*

Decision will be entered under Rule 50. [53]

The Tax Court of the United States
Washington

Docket No. 13780

Estate of ABRAHAM KOSHLAND, Deceased,
JESSE KOSHLAND, Executor,
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE.
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion promulgated November 30, 1948, counsel for respondent filed a recomputation of petitioner's liability on January 19, 1949. On February 14, 1949,

counsel for petitioner filed an acquiescence to respondent's recomputation. Now, therefore, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$33,119.49.

(Seal) /s/ C. P. LeMIRE,
Judge.

Entered Feb. 25, 1949. [54]

The United States Court of Appeals
For the Ninth Circuit

Tax Court Docket No. 13780

Estate of ABRAHAM KOSHLAND, Deceased,
JESSE KOSHLAND, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW BY THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The Estate of Abraham Koshland, Deceased, Jesse Koshland, Executor, respectfully petitions this Honorable Court to review the decision of The Tax Court of the United States entered in the above-entitled cause on the 25th day of February, 1949, and determining a deficiency in estate tax of \$33,119.49. [55]

I.

Jurisdiction

Petitioner is the estate of a decedent who died on April 15, 1944, and whose estate is being probated in the Superior Court of the State of California, in and for the City and County of San Francisco. Jesse Koshland is the duly appointed, qualified and acting executor of said estate.

The estate tax return for petitioner was filed with the Collector of Internal Revenue, First District of California, in the City and County of San Francisco, State of California, which is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Jurisdiction of this Court to review the aforesaid decision of The Tax Court of the United States is founded on Internal Revenue Code Sections 1141 and 1142.

II.

Prior Proceedings

The petitioner, on the 5th day of May, 1947, filed with The Tax Court of the United States a petition requesting a redetermination of a deficiency in estate tax in the amount of \$49,062.25 set forth by the Commissioner of Internal Revenue in a notice of deficiency dated April 7, 1947. The petitioner, on the 23rd day of March, 1948, filed with The Tax Court of the [56] United States an amended petition requesting a redetermination of the aforesaid deficiency. The case was heard before the Honorable

John Worth Kern at San Francisco, California, on March 23, 1948. The Tax Court promulgated its findings of fact and opinion on November 30, 1948 (11 Tax Court No. 109) and entered its decision on February 25, 1949.

III.

Nature of Controversy

The controversy herein involves petitioner's correct estate tax liability. This in turn depends on the following two issues which were presented to The Tax Court:

(1) Whether the remainder interest in a trust created by petitioner's decedent on or about December 26, 1922, and amended by said decedent on or about December 26, 1923, should be included in the gross estate.

(2) In the event that said remainder interest should be included in the gross estate, what was the value of the life estate in Estelle W. Koshland, petitioner's decedent's wife.

Petitioner and the Commissioner of Internal Revenue agreed that the value of said life estate should be subtracted from the value of said trust estate in determining the value of said remainder interest. The disagreement was as to the manner of valuation of said life estate. [57]

Before this Court of Appeals, petitioner does not press the point that the remainder interest in said trust should be excluded. The sole issue to be pre

sented to this Court is the valuation of the life estate of Estelle W. Koshland. Petitioner contends that The Tax Court erred in its determination of the value of said life estate.

Dated: March 18, 1949, San Francisco, California.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Attorneys for Petitioner.

[Endorsed]: T.C.U.S. Filed March 21, 1949. [58]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To the Chief Counsel of the Bureau of Internal
Revenue, Washington, D. C.:

Please Take Notice that petitioner, on the 21st day of March, 1949, filed with the Clerk of The Tax Court of the United States, his petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States heretofore rendered in the above-entitled cause.

A copy of the petition for review as filed is herewith attached and served upon you.

San Francisco, California, March 21, 1949.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Attorneys for Petitioner. [59]

Receipt of a Copy of the foregoing Notice and the attached Petition is hereby acknowledged this 22nd day of March, 1949.

/s/ CHARLES OLIPHANT,

Chief Counsel,

Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed April 1, 1949. [60]

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON REVIEW

To the Clerk of The Tax Court of the United States,
Washington, D. C.:

The petitioner on review in the above-entitled cause hereby designates for inclusion in the record on review, and you are hereby requested to prepare, transmit and deliver to the Clerk of The United States Court of Appeals for the Ninth Circuit (in either the originals or copies duly certified as correct) the following:

1. The entire record, proceedings and evidence in the above-entitled cause before the Tax Court.
2. Petition for review. [61]
3. Notice of filing petition for review.
4. This designation of contents of the record on review.

Dated March 21, 1949, San Francisco, California.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Attorneys for Petitioner.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed March 23, 1949. [62]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING DESIGNATION OF
CONTENTS OF RECORD ON REVIEW

To the Chief Counsel of the Bureau of Internal
Revenue, Washington, D. C.:

Please Take Notice that petitioner on the 23rd
day of March, 1949, filed with the Clerk of The Tax
Court of the United States his Designation of Con-
tents of Record on Review in the above-entitled
cause. A copy of said designation is hereunto at-
tached and served upon you.

San Francisco, California, March 23, 1949.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Attorneys for Petitioner.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed April 14, 1949. [63]

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON UPON REVIEW

Petitioner states that it intends to rely on the
following points upon the review of the decision of
The Tax Court of the United States in the above-
entitled cause:

1. The Tax Court erred in view of the uncontra-
dicted evidence in failing to value the life estate of

Estelle W. Koshland on the basis of the 1937 Standard Annuity Table.

2. The Tax Court erred in valuing the life estate of Estelle W. Koshland on the basis of the Actuaries' or Combined Experience Table. In view of the uncontradicted evidence, it erred in not finding the Commissioner's use of said table to be arbitrary and invalid.

3. The Tax Court erred in view of the uncontradicted evidence in failing to find that the factor for quarterly [64] payments to be used in the valuation of said life estate was .375 to be added to the factor for annual payments.

4. The Tax Court erred in finding the factor for quarterly payments to be used in the valuation of said life estate to be 1.01488 to be multiplied by the factor for the annual payments. In view of the uncontradicted evidence, it erred in not finding the Commissioner's use of said factor to be arbitrary and invalid.

San Francisco, California, March 23, 1949.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed March 25, 1949. [65]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING STATEMENT OF
POINTS TO BE RELIED ON UPON
REVIEW

To the Chief Counsel of the Bureau of Internal
Revenue, Washington, D. C.:

Please Take Notice that petitioner on the 25th
day of March, 1949, filed with the Clerk of The Tax
Court of the United States his Statement of Points
to be Relied on Upon Review in the above-entitled
cause. A copy of said statement is hereunto attached
and served upon you.

San Francisco, California, March 25, 1949.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Counsel for Petitioner.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed April 14, 1949. [66]

The Tax Court of the United States
Washington

Docket No. 13780

Estate of ABRAHAM KOSHLAND, Deceased,
JESSE KOSHLAND, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 34, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation as to Contents of Record on Review" in the proceeding before The Tax Court of the United States entitled: "Estate of Abraham Koshland, Deceased, Jesse Koshland, Executor, Petitioner, vs. Commissioner of Internal Revenue, Respondent," Docket No. 13780 and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United

States, at Washington, in the District of Columbia,
this 15th day of April, 1949.

(Seal) /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the United States. [67]

Before The Tax Court of the United States

Docket No. 13780

In the Matter of: ESTATE OF ABRAHAM
KOSHLAND, Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Court Room, U. S. Appraisers Building
630 Sansome St., San Francisco, Calif.

March 23, 1948—10:00 a.m.

(Met pursuant to notice.)

Before: Honorable J. W. Kern, Judge.

Appearances: Samuel Taylor, Edgar Sinton, Bernard Shapiro, 1211 Balfour Building, San Francisco, California, appearing on behalf of Estate of Abraham Koshland, Deceased, Petitioner. A. J. Hurley, (Honorable Charles Oliphant, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent. [1*]

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

PROCEEDINGS

The Court: Call the case of Estate of Abraham Koshland, Deceased.

The Clerk: Docket 13780.

Mr. Taylor: Ready for the Petitioners, Your Honor. Samuel Taylor, Edgar Sinton, and Bernard Shapiro, for the Petitioner.

Mr. Hurley: A. J. Hurley for the Respondent. Ready, Your Honor. [2]

* * * *

LAMBERT B. COBLENTZ,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified [18] as follows:

Direct Examination

The Clerk: Please be seated and state your name and address.

The Witness: I am Dr. Coblentz, office 384 Post, San Francisco.

The Clerk: Will you spell your last name, please.

The Witness: C-o-b-l-e-n-t-z.

By Mr. Taylor:

Q. Your full name is Lambert Coblentz?

A. Lambert B.

Q. How long have you been in practice, Doctor?

A. Over 40 years.

Q. Are you a specialist?

A. I am rated as a specialist in internal medicine.

(Testimony of Lambert B. Coblentz.)

Q. And you are qualified as an internist by the American Board of Internal Medicine?

A. I am.

Q. Have you ever taught medicine?

A. I have.

Q. Where?

A. At the Stanford University, at the San Francisco Hospital.

Q. Has Estelle W. Koshland, the wife of Abraham Koshland, the decedent in this case, ever been a patient of [19] yours? A. She has.

Q. When did she become a patient?

A. In 1943, I think. I think 1943 was the date. I don't remember the exact month.

Q. Wasn't she a patient before that?

A. I think it was—it might have been a little earlier.

Q. I have your file in this case. Could you——

A. I could refresh my memory.

Q. ——look in it and refresh your recollection on that? A. 1940.

Q. Yes. A. August, 1940.

Q. And was she a patient of yours as of the date of death of Abraham Koshland, April 15, 1944? A. She was.

Q. Did you see her professionally shortly prior to and at the time of her husband's death?

A. I did.

Q. Immediately after that time?

A. Yes, I did.

Q. Now, will you state whether in your opinion

(Testimony of Lambert B. Coblentz.)

she was in good health as of the date of the death of her husband? [20]

A. She was in good health.

Q. Did she have any condition which to your knowledge would indicate that her life expectancy would be less than normal?

A. None that I could discover.

Q. So that as far as you knew, you had every reason to believe she would live out her normal life expectancy? A. Normal expectancy.

Q. And that conclusion was based on periodic physical examinations of her from a period in 1940 until after the death of her husband?

A. Right.

Q. So far as you know she is still in good health?

A. As far as I know. [21]

* * * *

Mr. Taylor: It is hereby stipulated between counsel, subject to the objection by the Respondent on the ground that said facts are immaterial, that the cost as of April 15, 1944, of a non-refund single premium life annuity for a female age 66 purchased from a standard legal reserve life insurance company regularly engaged in the selling of annuity contracts would have been at least \$219,000 for an annuity paying said person \$15,000 a year, \$171,000 for an annuity paying said person \$11,733.82 a year, and \$135,000 for an annuity paying said person \$9,260.99 a year.

It is further stipulated that by a non-refund annuity is meant an annuity which pays the annuitant

a stipulated sum for his life, but the payments under which terminate upon the death of the annuitant.

May it be so stipulated, counsel?

Mr. Hurley: Yes, if the Court please. I am prepared, however, to object as counsel stated, and I think the objection [45] is evident.

* * * *

The Court: The Respondent's objection is taken under advisement.

Mr. Taylor: Mr. Waites, will you take the stand, please.

Whereupon,

GEORGE FRANK WAITES,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows: [46]

Direct Examination

The Clerk: Please be seated.

State your name and address.

The Witness: My name is George Frank Waites, business address, 620 Market Street, San Francisco, California.

The Clerk: Please spell your last name.

The Witness: W-a-i-t-e-s.

By Mr. Taylor:

Q. How old are you, Mr. Waites?

(Testimony of George Frank Waites.)

A. I was born in 1906 and I am now 42 years of age.

Q. What is your profession?

A. My profession is a consulting actuary.

Q. Will you state your background and your experience?

A. I am a graduate with honors in mathematics from the University of British Columbia. From 1933 to 1941 I was engaged with the Insurance Department of the Dominion of Canada in actuarial work. In 1941 I became associated with the Occidental Life Insurance Company of California as an officer with the title of Assistant Actuary. On December 31, 1945, I resigned and became a consulting actuary, and I have been in such business since that time.

Q. Are you a member of any actuarial societies?

A. I am a Fellow by examination of the Actuarial Society of America, and of the American Institute of Actuaries. [47]

Q. When did you become a Fellow of these societies?

A. I became a Fellow of those societies in 1940.

Q. In 1940 for each society?

A. Yes. I became a Fellow of each society in 1940.

Q. How many Fellows are there?

A. I would say that there are a total of between five hundred and six hundred Fellows who are Fellows of those societies. That includes Fellows who

(Testimony of George Frank Waites.)

are both in Canada and in Australia as well as in the United States.

Q. Are you including all the persons who are members of each society in that five hundred or six hundred group?

A. Oh, no. That includes those who have attained their fellowship degrees. In addition to the Fellow there are a number of associates.

Q. No, I mean all the Fellows of each society.

A. Yes, that five hundred to six hundred include the Fellows of both groups. A total.

Q. A person who is an associate of such a society is of a lower order, so to speak, than a person who is a Fellow. Is that correct?

A. I would say so.

Q. When did you enter practice as a consulting actuary? A. On January 1, 1946.

Q. Are you associated with any actuarial firm?

A. At present I am associated with the firm of consulting [48] actuaries, Coates & Herfurth of San Francisco.

Q. And Los Angeles?

A. We also have offices in Los Angeles.

Q. Now, will you tell the Court what an actuary is?

A. An actuary may be defined as a mathematician who has specialized in life contingencies, probabilities and expectancies, based upon mortality tables and their application in conjunction with compound interest tables.

* * *

(Testimony of George Frank Waites.)

Q. What does your work as a consulting actuary consist of?

A. My work as a consulting actuary consists of advising insurance companies and other interested people of mortality [49] tables to be used in connection with the determination of premiums, reserves, annuities, and also it deals with work involving annuities in connection with pension plans, and also deals with the application of mortality tables, expectancies and so on, to life estates.

Q. To the computation of the values of life estates?

A. That is the computation of the values of life estates.

Q. Are you acquainted with all types of mortality tables?

A. Yes. An actuary must be intimately familiar with all the standard mortality tables, and he must know something about their origin, their background, their validity, their application, and any other facts that may pertain to them.

Q. Will you tell the Court what a mortality table is?

A. A mortality table is a schedule showing out of a certain number under observation the number who survive and the number who die at each age. A mortality table is the basis on which all life insurance contracts are based, all annuity contracts are based on them, and life estates are also based on them.

Q. Is it a device by which the probability of liv-

(Testimony of George Frank Waites.)

ing and dying can be ascertained on the assumption that what has happened in the past will happen in the future?

A. The life table is the number living and the number dying at each age. From these you can determine the probability [50] of living or dying at each age, and the expectancies of life at each age.

Q. Now, are you familiar with the Actuaries' or Combined Experience Mortality Table? This is the table which is referred to in Regulations 105 Section 81.10 (i). A. I am.

Q. Are you familiar with Table A, the table entitled "Table, 4 Per Cent," showing the present worth of an annuity or a life estate and of the reversionary interest, which is a part of Regulation 105 Section 81.10 (i)? A. Yes.

Q. Is this table based upon the Actuaries' or Combined Experience Table of Mortality?

A. It is based on the Actuaries' or Combined Experience Mortality Table.

Q. Does Table A show the annuity value of \$1.00 a year first payment at the end of the first year for the lifetime of a person of a designated age in accordance with the Actuaries' or Combined Experience Table of Mortality?

A. Part of that table does.

Q. Yes. You mean it shows other things too?

A. Well, as I recollect it, it also shows the value of reversions there in addition to the life annuity. But as I recollect it, there is a column showing the

(Testimony of George Frank Waites.)

life annuity, another column showing the reversion.

Q. But it does show the annuity value?

A. Yes.

Q. So that if the Actuaries' or Combined Experience Table of Mortality is obsolete, would Table A also be obsolete? A. Yes.

Q. Will you define what you mean by "life expectancy"?

A. Life expectancy, or expectation of life may be defined as the probable average future lifetime of a person of designated age.

Q. As indicated in a mortality table?

A. As indicated in a mortality table.

Q. Does life expectancy mean the same as expectation of life, or complete expectation of life?

A. They are used synonymously.

Q. In your opinion is the Actuaries' or Combined Experience Table of Mortality obsolete?

A. Yes, unquestionably so.

Q. In your opinion was that true as of April 15, 1944? A. Yes.

Q. Would you as an actuary use that table in the valuation of a life estate? A. No.

Q. And is your answer the same were a life estate to be valued as of April 15, 1944?

A. Yes. I wouldn't use it as of that date [52] either.

Q. Now, will you state the reasons for the opinions you have just expressed?

A. Well, I think the best illustration of the fact that this table is obsolete is by reference to life

(Testimony of George Frank Waites.)

expectancies that are shown by various tables, and for that purpose I have assembled life expectancies under various tables to refer to. Probably at this time——

Q. Before you testify as to those life expectancies it might help the Court if you give a bit of history and the background of the tables which you expect to refer to.

A. Well, the Combined Experience Table of Mortality was first published in 1843, incidentally. It was based upon the experience of 17 British Life Insurance Companies and covered a period from 1762 until 1837. It did not distinguish between male or female lives. Its general use was discontinued well prior to 1900.

Q. That is when other mortality tables based on more recent experience came into use?

A. Yes.

Mr. Taylor: I ask that this document which is entitled "Combined or Actuaries' Experience Table" be marked for identification.

The Clerk: Marked for identification Petitioner's Exhibit No. 3. [53]

(The table referred to was marked as Petitioner's Exhibit No. 3, for identification.)

By Mr. Taylor:

Q. I show you Petitioner's Exhibit No. 3 entitled on top of the page, "Combined or Actuaries' Experience Tables," and consisting of three pages or photostats of three pages, designated Pages 18,

(Testimony of George Frank Waites.)

183 and 184, and also entitled, "Table 22, Combined Experience Table of Mortality," and ask you to state what that is?

A. This is the combined or actuaries' experience mortality table.

Q. May I have the book from which this table was photostated? A. Yes, sir.

Mr. Taylor: I show you, Counsel for Respondent, Wolfe's "Inheritance Tax Calculations," a book published in New York, 1905, by Baker Voorhis & Company, and show to you Pages 182, 183 and 184 of that book from which the photostats, Petitioner's Exhibit 3 for identification, were taken. Is that agreeable, counsel?

Mr. Hurley: Yes, I will stipulate if that is what counsel desires me to, that this is a correct, true and correct photostatic copy of the table shown on those pages.

Mr. Taylor: I offer Petitioner's Exhibit 3 for identification into evidence. [54]

Mr. Hurley: No objection.

The Court: Accepted in evidence.

The Clerk: Exhibit No. 3.

(The table referred to, heretofore marked as Petitioner's Exhibit No. 3 for identification, was received in evidence as Petitioner's Exhibit No. 3.)

[Printer's Note]: Petitioner's Exhibit No. 3 is set out in full at page 148 of this printed Record.

(Testimony of George Frank Waites.)

By Mr. Taylor:

Q. Will you proceed, Mr. Waites, with your description of the mortality tables, to which you were referring?

A. The next mortality table that I will refer— incidentally, I am just selecting certain standard mortality tables here for purposes of illustration. The next table that I will refer to is the American Experience Table of Mortality.

The American Experience Table of Mortality first appeared as such in the New York Insurance Code in 1868. It was based on the experience of the Mutual Life Insurance Company of New York. It did not distinguish between male nor female lives.

Q. Was that true also of the Actuaries' or Combined Experience Table?

A. Yes. That table did not distinguish between male and female lives.

Q. Yes. Will you proceed, please.

A. For many years the American Experience Mortality [55] Table was used as a basis for valuation by the states until the introduction of other tables which reflect more closely the modern experience, that is, the modern probability of dying. In other words, there are more modern tables that are now in general use.

Q. Is this table now considered obsolete?

A. The American Experience Table is now considered obsolete as well.

Q. Was that true as of April 15, 1944?

A. That would be true as of 1944.

(Testimony of George Frank Waites.)

Mr. Taylor: I will offer in evidence Appendix B—strike that.

I offer in evidence a two-page photostat entitled “Appendix B, Mortality Tables, American Experience Table.”

Mr. Hurley: No objection.

The Court: Accepted in evidence.

The Clerk: Petitioner’s Exhibit No. 4.

(The document referred to was marked and received in evidence as Petitioner’s Exhibit No. 4.)

[Printer’s Note]: Petitioner’s Exhibit No. 4 is set out in full at page 150 of this printed Record.

Mr. Taylor: There is no objection to the use of the photostat?

Mr. Hurley: No objection.

By Mr. Taylor:

Q. I show you Petitioner’s Exhibit No. 4. This is the table to which you referred in talking of the American Experience [56] Table of Mortality, is it not? A. Yes.

Q. Will you proceed with your description?

A. The next table that I have used for illustration is the American Annuitants Mortality Table. The American Annuitants Mortality Table was based upon an investigation by life insurance companies of annuities issued prior to 1917. This experience brought to light that females were living for a much longer time than males.

(Testimony of George Frank Waites.)

The American Annuitants Mortality Table was derived from the investigation that I have indicated, and it was used for some time for the purpose of computing annuity premiums, reserves and expectancies thereon.

However, general use of this table has also been discontinued due to the introduction of more modern tables.

Q. It this a composite table—by that I mean a table covering both male and female experience?

A. This table—there have been tables developed from this experience for both male and female lives, but the male table is used more extensively than the female.

Q. When you refer to the American Annuitants Table of Mortality is that the same table as the American Annuitants Table, Ultimate Male?

A. That is one of the tables that was derived from the experience that I referred to. [57]

Mr. Hurley: I didn't quite understand whether the witness' testimony is that this table as you have here, Mr. Taylor, is the same table to which he has just testified?

Mr. Taylor: I will show it to him and clear that point up.

Will you mark the table called "American Annuitants Table, Ultimate Male" for identification?

The Clerk: Mark it for identification Exhibit 5.

(The table referred to was marked as Petitioner's Exhibit No. 5, for identification.)

(Testimony of George Frank Waites.)

By Mr. Taylor:

Q. I show you Petitioner's Exhibit for identification No. 5, a table of two pages entitled "American Annuitants Table, Ultimate Male," and ask you if this is the table to which you referred to as American Annuitants Table of Mortality, as to which you have just testified?

A. This is the male table of the American Annuitants Mortality Table. There are other tables. There is a female table and some others.

Q. This is then the table on which you have testified?

A. That's right, yes, and the table that I have used for my illustrations of expectancies.

Mr. Taylor: I offer in evidence Petitioner's No. 5 Exhibit for identification.

Mr. Hurley: No objection. [58]

The Court: Received in evidence.

The Clerk: Exhibit No. 5.

(The table referred to, heretofore marked as Petitioner's Exhibit No. 5, for identification, was received in evidence as Petitioner's Exhibit No. 5.)

[Printer's Note]: Petitioner's Exhibit No. 5 is set out in full at page 153 of this printed Record.

Mr. Taylor: No objection to the use of the photostat?

Mr. Hurley: No objection.

(Testimony of George Frank Waites.)

By Mr. Taylor:

Q. Will you continue with your description, Mr. Waites, please?

A. The next table that I have used for illustration is the Combined Annuity Mortality Table. When group pensions and other benefits came into general use the insurance companies felt that they were in need of a table that would serve this purpose. For this reason the Combined Annuity Mortality Table was developed.

In developing it they used group life insurance experience for the younger ages, and the American Annuitants Mortality Table for the higher ages.

It was brought out again that females were living longer than males. However, it was found that the one table could be used for both male and female lives. In fact, the male table could be used provided the females were taken at an age four years younger than the male lives. Accordingly, the [59] one table is used for the two.

It was adopted with 4 per cent interest by the State of New York as a standard for the valuing of annuities and reserves thereon, for all annuities issued on and after January 1, 1930. However, its use has been discontinued in general by actuaries and insurance companies because of the introduction of more modern mortality tables.

Q. Has the use of that table been discontinued because of increase in longevity?

A. Yes. By the use of more modern tables, mean that people are living longer.

(Testimony of George Frank Waites.)

May I go back to some testimony I gave a few minutes ago? When I indicated that a mortality table is based on experience in the past and is used to forecast experience in the future—now, whenever one mortality table is developed they hope that it is going to anticipate the experience of the future, but it never does that. It seems to me that each time a table is developed they find that people are living longer than they anticipated under that table.

Q. Now, when you testified that one table would do for both male and female lives provided that the female lives were taken at an age four years younger than the male lives, did you mean, for example, that a female aged 66 would be treated as having the same expectancy of life as a male aged 62? Is that what you mean? [60]

A. Yes.

The Court: Why is it that these changes are not reflected, at least I don't think they are, in insurance premiums? Is that because of the fact that as the expectancy increases the rate of interest decreases?

The Witness: That has been the experience in the past. But the main reason is that through the use of dividends they return to you any mortality savings that they earn.

The Court: All right, Mr. Taylor.

By Mr. Taylor:

Q. They are reflected, are they not?

A. Oh, yes. The insurance companies have adopted a new table for the determination of their

(Testimony of George Frank Waites.)

premiums as of January 1 of this year.

Mr. Taylor: I will bring that out.

The Court: All right.

Mr. Taylor: Mr. Clerk, I hand you a document entitled "Combined Annuity Table" consisting of three pages, and ask that you mark it for identification.

The Clerk: Marked for identification Exhibit 6.

(The table referred to was marked as Petitioner's Exhibit No. 6, for identification.)

By Mr. Taylor:

Q. I show you Petitioner's Exhibit 6 for identification, document entitled "Combined Annuity Table," and ask if this is [61] the table which you described as "Combined Annuity Mortality Table," and as to which you just testified? A. Yes.

Q. I note on this table, and I believe it is true of the other tables to which you testified, except the Actuaries' or Combined Experience Table, that there is a column headed "Number Living," another column headed "Number Dying," a column headed "Yearly Probability of Dying," and a column headed "Complete Expectation of Life."

Would you explain those columns for the record, please?

A. The number living shows the observed number of lives on which the mortality table is based. For instance, this table shows at age 10, which is the lowest age in this table, shows a number living of 100,000. It also shows a number dying of 153. That would be the number dying before they at-

(Testimony of George Frank Waites.)

tained age 15.

The yearly probability of dying is obtained from those two columns and is merely the ratio of the number dying to the number living at the beginning of the year.

Is that sufficient for your purpose?

Q. Yes, I believe so.

You testified that complete expectation of life is the same as life expectancy?

A. That's right. [62]

Mr. Taylor: I offer in evidence Petitioner's Exhibit 6 for identification.

Mr. Hurley: No objection.

The Court: Accepted in evidence.

Mr. Taylor: No objection to the use of the photostat?

Mr. Hurley: No.

The Clerk: Exhibit No. 6.

(The table referred to, heretofore marked as Petitioner's Exhibit No. 6, for identification, was received in evidence as Petitioner's Exhibit No. 6.)

[Printer's Note]: Petitioner's Exhibit No. 6 is set out in full at page 155 of this printed Record.

By Mr. Taylor:

Q. So that the record may be clear, I show you Petitioner's Exhibit 3 in evidence, the Combined or Actuaries' Experience Table of Mortality, and ask you to explain the symbols "LX," "D" and "Ex-

(Testimony of George Frank Waites.)

pectation," which are found on top of the columns in that table.

A. The "LX" symbol is merely a shorthand form of indicating the number living at any age under observation.

The "DX" refers to the number dying at each age.

Q. The "Expectation" mean life expectancy, does it? A. It does.

Q. Would you continue with the description of the tables, mortality tables which you have used?

A. The next table that I have used for an illustration is the 1937 Standard Annuity Mortality Table. This annuity [63] table was derived from an investigation of group life insurance mortality covering the years 1932 to 1936. This was used for the younger ages.

For the older ages they used the American Annuity Select Male Table, rating it back two years. The results of this table——

Q. When you say "younger ages" and "older ages," so that the record may be clear, what do you mean?

A. Well, between 60 and 65 was where the two experiences merged.

Q. Yes. In other words, under 60 was the younger age?

A. Roughly speaking, yes. Actually what happened, they took one table to 65 and then took the other table back to 60 and merged the two between 60 and 65.

(Testimony of George Frank Waites.)

Q. I see. Will you proceed, please?

A. This mortality table they developed coincided with an annuity mortality investigation that they were running at the same time covering the period 1931 to 1935, I think. As a result, this table was adopted by insurance companies and actuaries and called the 1937 standard annuity table. This table has been used since 1937 and it is still used by actuaries and insurance companies as a basis for determining annuities, reserves and expectancies thereon.

However, insurance company actuaries are of the opinion that it isn't sufficiently conservative. That is [64] their experience is that people are living longer than the expectation indicated by this table.

Q. When you say "conservative" you mean——

A. From their point of view.

Q. The longevity shown by the table is less than the longevity shown by actual experience?

A. That is correct.

Q. Now you have referred here to the use of the 1937 Standard Annuity Table by insurance companies. Does that include use by leading insurance companies like Metropolitan Life Insurance Company and New York Life Insurance Company?

A. Oh, very definitely.

Q. And other leading companies?

A. Very definitely.

All the insurance companies are using it.

Q. And were using it as of April 15, 1944?

A. Oh, yes.

(Testimony of George Frank Waites.)

Q. Is this table a composite table?

A. By "composite" I presume you mean differentiating between males and females?

Q. If it differentiates then it is not a composite table, is my understanding.

A. Again, in this table they found that females were living longer than males. However, they did find that the one table again would do for both male and female lives, provided, [65] however, that the age of the female was taken at an age five years younger than the male life. So the one table does for both male and female lives with the proper adjustment.

Mr. Taylor: Mr. Clerk, I hand you a three-page photostat entitled "1937 Standard Annuity Table," and ask that you mark it for identification.

The Clerk: Exhibit 7, marked for identification only.

(The table referred to was marked as Petitioner's Exhibit No. 7 for identification.)

By Mr. Taylor:

Q. I show you Petitioner's Exhibit 7 for identification, a three-page photostat entitled "1937 Standard Annuity Table," and ask if that is the table as to which you have just testified?

A. That is the table to which I just testified.

Mr. Taylor: I offer Petitioner's Exhibit 7 into evidence.

Mr. Hurley: No objection.

The Court: Accepted in evidence.

The Clerk: No. 7.

(Testimony of George Frank Waites.)

(The table referred to, heretofore marked as Petitioner's Exhibit No. 7, for identification, was received in evidence as Petitioner's Exhibit No. 7.) [66]

[Printer's Note]: Petitioner's Exhibit No. 7 is set out in full at page 158 of this printed Record.

Mr. Taylor: There is no objection to the use of a photostat?

Mr. Hurley: No.

By Mr. Taylor:

Q. Now, before you testified as to the history and background of these tables you stated that you had prepared a tabulation showing the expectancies of life thereunder for various ages. You have that tabulation before you?

A. Yes, I have prepared that and I have it before me.

I would be glad to read it, although I believe that I left you some copies if you would like to refer to those rather than have me read them.

Mr. Hurley: If this is simply a recapitulation of the actual schedules set out in the tables in evidence, I have no objection to it going in, subject to check.

Mr. Taylor: As to accuracy.

Mr. Hurley: I will accept the photostatic copies as primary evidence, and this is simply a recapitulation of what is in there.

The Court: You offer this in evidence?

(Testimony of George Frank Waites.)

By Mr. Taylor:

Q. This is a recapitulation, Mr. Witness, of the tables or some of the elements in the tables?

A. May I have a look at it?

Yes, that is correct. [67]

Mr. Hurley: I have no objection in so far as it is just a recapitulation.

Mr. Taylor: I offer in evidence the document entitled "Complete Expectancies of Life Under Certain Standard Mortality Tables for Various Ages," a single page typed sheet.

The Court: Admitted in evidence.

The Clerk: Petitioner's Exhibit No. 8.

(The recapitulation referred to was marked and received in evidence as Petitioner's Exhibit No. 8.)

[Printer's Note]: Petitioner's Exhibit No. 8 is set out in full at page 161 of this printed Record.

By Mr. Taylor:

Q. What is the life expectancy under Petitioner's Exhibit 8 under the Actuaries' or Combined Experience Table for a person aged 66?

A. For a person aged 66 the life expectancy under the Combined Experience or Actuaries' Mortality Table is 10.46 years.

Q. What is it under the 1937 Standard Annuity Table for Females?

A. Under the 1930 Standard Annuity—

Q. 1937 Standard Annuity.

A. For females it is 16.9 years.

(Testimony of George Frank Waites.)

Q. And you meant the 1937 Standards?

A. Yes, the 1937 Standard Annuity Mortality Table.

Q. Is the Actuaries' or Combined Experience Table of [68] Mortality generally regarded as obsolete among actuaries and among insurance companies?

A. Yes. Its general use was discontinued by insurance companies and actuaries prior to 1900. About the only instances where it would be used now, apart from under the Regulations of the Bureau of Internal Revenue, are in some cases there may be policies that have been issued 40 or 50 years ago where it may be used for their valuation.

Q. A policy issued 40 years ago would be issued after 1900. Do you mean 50 years ago?

A. I am being conservative and saying 40 or 50 years ago. Actually its general use was discontinued prior to 1900. But it may have been used by some after that date.

Q. Now, you have referred to certain mortality tables and have given their history and their background. Why have you selected these tables?

A. I have selected these tables because all of them were standard mortality tables as of the time that they were developed, and they have been in current use from time to time, and I have used them to illustrate the fact that the expectancy of life has been continually increasing.

Q. They are tables which, as of the time they were prepared, were in widespread use?

(Testimony of George Frank Waites.)

A. At the time they were prepared, or following the time they were prepared they were in widespread use. [69]

Q. Yes. Have you determined what the present value of an annuity of \$1 per year payable for the lifetime of an annuitant aged 66 at the commencement of the annuity and assuming 4 per cent compound interest is? A. Yes.

Q. Have you prepared a table which states such factor, that is, such present value factor for each of the mortality tables which you have mentioned?

A. Yes.

Mr. Taylor: I offer in evidence a single sheet entitled "Present Values Under Various Mortality Tables of an Annuitant of \$1 per year payable for the lifetime of an annuitant age 66 at the commencement of the annuity, assuming 4 per cent compound interest."

Mr. Hurley: Counsel tells me that this exhibit is simply the witness' computation, and in so far as it is simply reduced to writing what he would testify to orally as the basis of his computation. I have no objection to the exhibit.

The Court: Accepted in evidence.

The Clerk: Exhibit No. 9.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 9.)

[Printer's Note]: Petitioner's Exhibit No. 9 is set out in full at page 162 of this printed Record.

(Testimony of George Frank Waites.)

The Court: You say a person 66 years old. Does it make any difference whether that person is a male or female?

The Witness: The value of the annuity based on a [70] person age 66 years and the expectancy depends on whether they are male or female.

Mr. Taylor: If the Court please, Petitioner's Exhibit 9 shows that where the mortality tables have differentiated that the factor is different. So it does make that difference.

By Mr. Taylor:

Q. I show you Petitioner's Exhibit 9. You will note that it says there—first it refers to assuming 4 per cent compound interest, and then it says, ("Discounting future payments upon the basis of compound interest at the rate of 4 per cent a year").

Is that statement the same as the statement assuming 4 per cent compound interest?

A. They mean the same.

Q. Yes. How did you derive this table, Petitioner's Exhibit 9? Let me rephrase the question:

Did you derive this table in accordance with established actuarial principles? A. I did.

Q. Through mathematical means?

A. Yes, by mathematical means.

Q. Can you state what the present value of an annuity of \$1 per year, payable for the lifetime of an annuitant age 66 at the commencement of the annuity and assuming 4 per cent [71] compound interest is under the Combined Experience or Actuar-

(Testimony of George Frank Waites.)

ies' Table and under the 1937 Standard Annuity, Females?

Will you state that both for annual payments and for quarterly payments, first payment at the end of the first quarter?

A. For the annual payments for the two tables that you have indicated the values are 7.525 and 10.974.

For quarterly payments the values for the same two tables are 7.900 and 11.349.

Q. Now, in the amended Petition which has been filed in this case, in Paragraph 5, sub-paragraph 8 thereof, there is a reference to a table, a factor under the Combined Experience or Actuaries' Table of 7.52476. In your table, Petitioner's Exhibit 9, you refer to the factor 7.525.

If you had carried out that factor, 7.525 two further places, would it have been 7.52476?

A. My recollection is yes. I may say that all the figures I have used are taken to three decimal places because they are merely illustrative values, and actually they go to more places than three. I have taken them to the nearest third place.

Q. Likewise in your computation, Petitioner's Exhibit 9, you refer to the factor under the 1937 Standard Annuity for Females, assuming quarterly payments, as 11.349.

In the amended Petition it is referred to as 11.34913. [72] I take it if you had carried out the factor 11.349 two further decimal places, it would be 11.34913?

A. That is correct.

(Testimony of George Frank Waites.)

Q. Now, I note that you use in Petitioner's Exhibit 9 .375 as the actuarial factor for quarterly payments. The Commissioner in his regulations, Section 81.10 (i), Regulations 105, uses as the factor for quarterly payments the number 1.01488.

Will you explain why your figure is different from the Commissioner's figure?

A. The Commissioner's figure is the correct figure to use if you are dealing with an annuity that involves interest only. However, when you are dealing with an annuity that involves interest and in addition the probability of living or dying, then the correct actuarial fact is .375.

For example, now, if you had an annuity payable for 10 years certain in any event, whether or not the individual lived or died, then the use of the factor that the Commissioner used would be correct. However, if you had the same annuity that was payable only in the event that the person survived, then it would be necessary to use a factor such as I have used.

In other words, the factor of .375 that I have used recognizes that interest as well as mortality have been taken into consideration in determining the value of quarterly payments [73] from the value of annual payments.

Q. You said interest as well as mortality. You mean mortality as well as interest? A. Yes.

Q. I mean, the Commissioner recognizes interest but he doesn't recognize mortality in his factor. Is that correct?

(Testimony of George Frank Waites.)

A. That's right. The factor he uses is only an interest factor, whereas the factor of .375 involves interest and mortality.

Q. And the life estate here involves both interest and mortality? A. Yes, it does.

Q. Since it ends upon the death of Mrs. Koshland? A. Yes, it does.

Q. And the Commissioner in his factor took no recognition of the mortality aspect?

A. As far as the factor is concerned.

Q. As far as the factor for quarterly payments is concerned?

A. He has just recognized the interest element.

Q. Yes. Now, the factor which you used for quarterly payments, .375, was that used in accordance with established actuarial principles?

A. It was. That is the factor that is used by actuaries in determining quarterly payments from the value of [74] annual payments.

Q. Now, you are testifying in effect that the Commissioner is in error actuarially speaking in the use of his quarterly factor?

A. That is correct.

Q. In view of the fact that you are attacking the regulations broadside here, so to speak, will you indicate to the Court the authority for your conclusion?

A. Yes. The derivation of the factor of .375 is worked out in standard actuarial textbooks, and for this purpose I would like to refer you to what is

(Testimony of George Frank Waites.)

known as the Actuaries' Bible. That is Spurgeon "Life Contingencies."

Q. Will you indicate who published it, where it was published for the record, and also the exact name of the author?

A. This text—the author is E. F. Spurgeon, "Life Contingencies," Cambridge, published for the Institute of Actuaries at the University Press, 1929.

Q. That is the University at Cambridge in England?

A. That's right, and the derivation of this value appears on Page 129 under Section 2 of Chapter VII.

Q. It shows on Pages 128 and 129 that this formula which reaches the result .375 is derived by complex—at least complex to a lawyer—mathematical computations.

A. That's right. [75]

Mr. Taylor: I won't offer those computations in evidence, Your Honor, there is no particular point to it unless counsel wants it.

Mr. Hurley: I would just as soon not have it in the record, cluttering up the record.

Mr. Taylor: You will stipulate, though, that it is derived from complex mathematical computations from Pages 128 and 129?

Mr. Hurley: I think for purposes here, Your Honor, I think Petitioner is entitled to stand on the testimony of the expert. He apparently understands these formulas, and I have some questions to ask on cross-examination with respect to derivation of the factor, and I assume I will be satisfied

(Testimony of George Frank Waites.)

at that time. I can't very well stipulate as to his formula.

Mr. Taylor: Very well. I would like to offer in evidence, Your Honor, Pages 128 and 129 of the book "Life Contingencies" by E. F. Spurgeon, published at the University Press, Cambridge, England, and would like to ask leave to withdraw this book and to substitute photostatic copies of these pages.

The Court: No objection?

Mr. Hurley: I have no objection.

The Court: Accepted in evidence. Leave granted.

The Clerk: Exhibit 10. [76]

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 10.)

[Printer's Note]: Petitioner's Exhibit No. 1 is set out in full at page 163 of this printed Record.

Mr. Taylor: At the time that I submit the photostats, Your Honor, I will give counsel for the Respondent copies thereof.

By Mr. Taylor:

Q. Now, the factors both for annual payments and for quarterly payments to which you referred in Petitioner's Exhibit 9 were determined by you from standard actuarial tables? A. Yes.

Q. And in accordance with established actuarial principles? A. That is correct.

Q. The factor which you used, .375, takes into consideration the fact that a quarterly payment

(Testimony of George Frank Waites.)

will not be made if the annuitant is dead at the time that the payment would otherwise be made. Is that correct? A. That is correct.

Q. And the factor which the Commissioner uses, 1.——

A. ——1488, I think it was.

Q. 1.01488 does not take that element of mortality into account?

A. No, it ignores it entirely.

Q. That is where its error is.

Have you read the trust created by Abraham Koshland in [77] this case, Exhibit B as amended by Exhibit C? A. Yes.

Q. And you are familiar with its provisions?

A. In general.

Q. Yes. It has been stipulated in this case that Abraham Koshland died on April 15, 1944, at the age of 75, and that Estelle W. Koshland, his widow, was 66 years of age at the time of his death.

It has been further stipulated that the fair market value of the trust estate as of the date of Abraham's death was \$231,524.64.

In your opinion, upon the basis of what mortality tables should the life estate of Mrs. Estelle W. Koshland be valued?

A. I would use the 1937 Standard Annuity Mortality Table.

Q. You are aware, of course, and were aware in answering that question that Mrs. Estelle W. Koshland has a life estate under the trust, Exhibit B as amended by Exhibit C?

(Testimony of George Frank Waites.)

A. Yes, I understand that.

Q. Now, why would you use the 1937 Standard Annuity Mortality Table, and I take it you would use the one for females?

A. Yes, I would use the one for female lives. I would use it because that is the most current standard table that [78] would reflect the expectancy of a person at this time.

Q. Was that true as of April 15, 1944?

A. That would be true as of 1944 as well.

Q. It would be true from 1937 to date?

A. Yes.

Q. Is it the table which insurance companies have found reflects most accurately the actual mortality of annuitants?

A. That has been their experience.

Q. Is the 1937 Standard Annuity Table in a widespread use?

A. Oh, yes, it is used by every insurance company and every actuary for that matter.

Q. That is true as of April 15, 1944?

A. Yes.

Q. Have you computed the value of the life estate of Estelle W. Koshland as of the date of death of her husband, April 15, 1944, at which time she was 66 years of age, on the assumption that:

1. That she would receive \$15,000 a year in quarterly payments for life; and on the assumption

2. That she will receive \$9,260.99 a year in quarterly payments for life, the first payment in each case to be made at the end of the first quarter, an

(Testimony of George Frank Waites.)

on the assumption in the case of each of these amounts that all [79] future payments are to be discounted upon the basis of compound interest at the rate of 4 per cent a year?

A. Yes, under the mortality tables that we have mentioned.

Q. You say you have made such computations under the several mortality tables which you have discussed?

A. That is correct.

Q. In your testimony up to now?

A. That is correct.

Q. Now, have you made such computations with and without the factor for quarterly payments?

A. I have.

Q. What factor for quarterly payments have you used?

A. I have used the factor .375 added to the factor for annual payments.

Let me correct myself there. I said I have used the factor .375 added to the value of an annual annuity. That is what it is really.

Mr. Taylor: I will offer as an exhibit a sheet entitled "Present Values of Annuities Payable for the Lifetime of an Annuitant Age 66 at the Commencement of the Annuity Under Various Mortality Tables With 4 Per Cent Compound Interest (discounting future payments upon the basis of compound interest at the rate of 4 per cent a year)."

Mr. Hurley: I have no objection, Your Honor, subject [80] to the same qualification, that this is

(Testimony of George Frank Waites.)

simply what the witness would otherwise testify to.

The Court: Accepted in evidence.

The Clerk: Exhibit 11.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 11.)

[Printer's Note]: Petitioner's Exhibit No. 11 is set out in full at page 165 of this printed Record.

By Mr. Taylor:

Q. I show you Petitioner's Exhibit 11 and ask you if the reference to 4 per cent compound interest means the same thing as the statement "Discounting future payments upon the basis of compound interest at the rate of 4 per cent a year"?

A. They mean the same thing.

Q. Now, will you state from this table, Petitioner's Exhibit 11, what the present value of an annuity of \$15,000 a year with payments made quarterly, first payment at the end of the first quarter, is under the Actuaries' or Combined Experience Mortality Table?

A. For \$15,000 a year, payable quarterly, the value under the combined experience or Actuaries' Mortality Table is \$118,500.

Q. Will you state what it is under the 1951 Standard Annuity Table, Female?

A. \$170,235.

Q. Well now, assuming \$9,260.99 instead of \$15,

(Testimony of George Frank Waites.)

000 as the amount of the annuity, would you state what the value is [81] under:

1. The Combined Experience or Actuaries' Tables; and under 2. The 1937 Standard Annuity, Female? A. \$73,161.82, and \$105,102.98.

Q. Now, in the amended Petition, in Paragraph 5, subparagraph 8, the value of the life estate of Estelle W. Koshland as of the date of Abraham's death is alleged to be \$170,236.95. In Petitioner's Exhibit 11 you find a value of \$170,235. Will you explain that discrepancy?

A. Yes. The reason is that in computing my value I have used the value in Exhibit 9 of 11.349 to three places of decimals. Actually, the value taken to five places is 11.34913.

Q. You mean that is the factor?

A. That the application of that factor would give you the value that you have there.

Q. So the correct value is actually \$170,236.95, the correct value of the life estate?

A. Yes. [82]

* * *

Q. Now, in some of the exhibits which have been introduced into evidence which you have prepared, there is a reference to the present value of an annuity. I underscore the word "annuity," of \$15,000 per year or of \$9,260.99 per year as the case may be, commencing upon the death of a female of the age of 66 and continuing for her life.

When you used "annuity," the word "annuity"

(Testimony of George Frank Waites.)

in those exhibits, did you mean that to mean the same as life estate?

A. The word "annuity," the actuarial meaning of the word "annuity" is a series of periodic payments, and in this case it is a series of periodic payments for the lifetime of the annuitant, and it is my understanding that the meaning of the life estate corresponds to that definition.

Q. In other words, you means it to be the same as the present value of the life estate? A. Yes.

Mr. Taylor: That is all. Your witness, Mr. Hurley.

Cross-Examination

By Mr. Hurley:

Q. Mr. Waites, since your most recent testimony has been with respect to the proper factor to be applied in the case of quarterly payments as distinct from annual payments I would like to ask you a couple of questions on that computation.

I have here Petitioner's Exhibit 9 in which you say that the annual factor for quarterly payments is .375. [90]

Now, the Commissioner, as you know, has used the factor 1.01488.

I would like you to read Regulations 105, Section 81.10 (i) (6), in which the factors applicable to such situations in the regulations are set out. Please read Paragraph 6 and tell me whether the factor prescribed by that subsection is actuarially sound?

A. May I ask what you mean by "actuarially sound"?

(Testimony of George Frank Waites.)

Q. Simply this—let me read sub-section 6.

“In the case of an annuity under which the decedent was entitled to receive during the life of another payments at the end of each semi-annual quarterly or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the figure in Column 2 of Table A opposite the number of years in Column 1 nearest the actual age of the person whose life measures the duration of the annuity, and then multiplying the product by the following factors: One for monthly, one for quarterly and one for semi-annual payments.”

Now, this is a formula for valuing an annuity. Your testimony this morning was on the subject of valuing an annuity when you have the payments made quarterly. This is a formula for valuing an annuity when the payments are made quarterly.

Now, I wish you to read Section 6 again, take as [91] much time as you wish, and tell me whether the formula prescribed by that section is actuarially sound, whether that factor is actuarially sound.

A. This factor of 1.01488 that you have reference to is actuarially sound as long as you are dealing with interest only. But when you are dealing with interest as well as the probability of living, then it is not actuarially sound.

Q. In other words, read the provision there of subsection 6 to yourself, where it says “For the life of another,” and of course it is related directly to the tables which are mortality tables, so that we

(Testimony of George Frank Waites.)

have involved, Mr. Waites, the life of a person and an annuity for the life of a person.

A. That is correct.

Q. So we have a circumstance as we have here, where we are concerned not only with the life of someone but with quarterly payments for the duration of that life.

Now, what is your conclusion upon the basis of that formula prescribed, regardless, of course—we are not concerned with the antiquity of the table itself, we are simply concerned with the mathematical validity of the factor used.

A. My answer is the same I gave before. That is as long as you are dealing with interest only, the factor of 1.01488 is a correct factor, it is actuarially correct. However, if you were dealing with interest as well as the possibility of living, then it is not a correct actuarial [92] factor.

Q. Sub-section (c) deals with interest as well as the probability of living. Is that correct?

A. That may be so.

Q. Will you please read it as an actuary and tell me whether it does?

Mr. Taylor: Sub-section what, Mr. Hurley?

Mr. Hurley: This is 6. Did I say “C”?

Mr. Taylor: You said “C.”

Mr. Hurley: I means 6 of (i) under 81.10, Regulations 105.

A. Well, may I make an interjection at this stage?

It seems to me that irrespective of what this say

(Testimony of George Frank Waites.)

here, the mathematical or the actuarial answer would be the same.

By Mr. Hurley:

Q. Well, that is the question I am coming to. Maybe we can proceed a little further here. Your factor is a factor to be added, is that right?

A. That is correct.

Q. The factor set out in the Commissioner's regulations is to be multiplied.

A. That is correct.

Q. Both Mr. Taylor and myself confess our ignorance on matters of statistics and actuarial computations. Therefore I am asking you whether your factor which it to be added [93] and the Commissioner's factor which is to be multiplied is in effect not the same factor?

A. Oh, no, they are entirely different.

Q. Do the computations produce different results?

A. Oh, definitely.

Q. Then one must be sound and one must be unsound.

A. One is sound where you are dealing with interest alone. The other is sound when you are dealing with interest as well as the probability of living.

Q. I hate to repeat this, but would you please read 6 and take into consideration the circumstances under which that sub-section is to be applied so that you can come to the conclusion whether under those circumstances such a factor is actuarially sound.

A. Well, it seems to me that in this, that if two

(Testimony of George Frank Waites.)

and two made five, that irrespective of what it said that wouldn't be correct.

Q. I agree with you. All I want you to say is if you think this is actuarially unsound, that you state your opinion to that effect.

A. Well, my answer is the same, that the factor of 1.01488 is correct if you are dealing with an annuity that involves interest only; but when you are dealing with an annuity that involves interest and probability of living as well, then this factor is incorrect. [94]

Q. Then I ask you this, Mr. Waites: Does sub-section 6 not deal with a situation where you both have not only a question of life expectancy but also a question of interest?

A. (Examining document): Now, what was your question again?

Q. You said that such a factor as is prescribed here is sound where we have simply a question of interest?

A. That is correct.

Q. Not a question of any life expectancy?

A. That is correct.

Q. But where we have the double, you might say, question, interest for a life expectancy, that such a factor is not sound. Is that your testimony?

A. That is correct.

Q. Is it not true that sub-section 6 specifically and expressly provides for that factor in cases where we have a life expectancy involved, and an annuity for the life of someone?

A. I think it could be read to mean such. That

(Testimony of George Frank Waites.)

is, it refers to an annuity for the lifetime, but that—

Mr. Taylor: I didn't get the question and answer. Would you object, counsel, if they were read?

Mr. Hurley: Certainly not.

(Question and answer read.)

A. (Continuing): If I may be permitted—but that does [95] not mean that it would be the correct one to use when you had an annuity continuing for the lifetime of an annuitant.

The Court: In other words, Mr. Witness, you think that the regulation as interpreted to you by counsel in questioning is wrong actuarially?

The Witness: When dealing with the lifetime annuity, yes.

Mr. Hurley: If the Court please, I don't wish to interpret it. I have been insisting upon the witness himself reading and arriving at his own interpretation.

The Court: I was just thinking, Petitioner's counsel having taken a rather iconoclastic attitude toward the regulations, it wouldn't have surprised me if he had not made the point to cross-examine an actuarial witness by forcing him to read Respondent's regulation almost violates the Bill of Rights in some ways as being cruel and inhuman.

Mr. Taylor: Your Honor, our witness is an expert on mathematics, an actuary, not an expert in law.

The Court: Well, I am not denying that, but to be an expert in mathematics and still be able to

(Testimony of George Frank Waites.)

read the regulations glibly and intelligibly the first time would rank you with Einstein, perhaps, Mr. Witness.

Mr. Taylor: I will stipulate if this is what counsel wants, that the factor 1.01488 is the one that the Commissioner uses. He uses this in the 90-day letter and [96] uses it elsewhere than in sub-paragraph 6 of these regulations.

Mr. Hurley: If your Honor please, the issue is very simple. The testimony was that the factor used in the 90-day letter, the factor that was arrived at in computing deficiency in this case is a proper factor where you simply have a question of giving effect to the fact that an annuitant receives income from the annuity four times a year, and it is a different situation where the person receives it semi-annually. It is likewise a different situation where he receives it annually, simply the advantage an annuitant gets by being able to receive four payments a year instead of one payment.

Now, the factor is concededly correct in such instances. I am merely referring to one section of the Regulations in which the factor which has been used in this proceeding is described, and I merely am calling the attention of the witness that that factor is prescribed in the very instances in which the witness has stated that his factor is applicable.

Testimony is also to the effect that each factor produces different results. Now, if the witness simply wants to say that the Regulations as written are in conflict with actuarial principles I am willing to

(Testimony of George Frank Waites.)

accept that testimony, but I want to have in the record that the computation in the notice of deficiency was in pursuance to the Regulations and there was no oversight made in that the situation we have here is not a different situation than the situation prescribed [97] in the Regulations fundamentally.

Mr. Taylor: I don't think counsel correctly stated the witness' testimony, Your Honor. I simply want the record to show I disagree with his statement.

Mr. Hurley: In any event I am willing to give the witness as much time as possible simply to read eight lines of the Regulations and tell me whether that is actuarially sound.

The Court: As I understand, the witness has attempted to answer your question in this way, Mr. Hurley, and that is by saying that if the Regulation prescribes that this factor be used in cases where only the interest factor is involved, then it is correct. If it prescribes such factor to be used where not only interest but also the length of life are factors then it is wrong actuarially.

Is that correct?

The Witness: That is correct.

The Court: You do not attempt to interpret the Regulations as to whether it prescribes one way or the other?

The Witness: No.

The Court: But assuming two readings of the

(Testimony of George Frank Waites.)

Regulations, he has given his answer as an actuarial expert.

Mr. Hurley: All right, that is perfectly satisfactory. Now if I can pursue this matter one step further.

By Mr. Hurley:

Q. Not being an actuary, and perhaps you have to bear [98] with me on this analysis, the purpose of a quarterly factor or semi-annual factor as distinct from an annual factor which is no factor at all, is that right——

A. Yes, that's right.

Q. ——is that when a person receives an annuity four times a year he has the advantage over a person receiving an annuity once a year. Is that correct?

A. That is correct.

Q. Therefore, the value of that is greater than if you received it once a year. Is that correct?

A. That is correct.

Q. Now, Mr. Waites, in what respect is the value of that greater when you receive it four times a year than when you receive it once a year?

A. Are you referring to a life annuity now?

Q. Yes. A. In a life annuity——

Q. Excuse me, let me interrupt to simply—let's assume annuity for ten years.

A. Not contingent on any life or anything like that?

Q. No.

A. If it is just for a term of ten years irrespective whether the recipient is living or dead, it is merely a matter of receiving the money ahead of

(Testimony of George Frank Waites.)

time so that the person can invest the money and receive the interest on it themselves. [99] Therefore the value to that individual is greater.

Q. That is the instance that you speak of, this factor that we have here is proper?

A. That's right, yes.

Q. Now, we have another situation, a person whose life expectancy is ten years. Why should the factor in that instance be any different?

A. Because the factor—that is a life annuity that we are dealing with, and the value of the life annuity is the discounted value of the probability that he will be living at the end of each period in question. So consequently, for each payment you get a discount factor, that is interest, as well as the probability of living.

Q. In other words, when we assume that a person has a life expectancy of ten years, that is not the same assumption as the previous one that we had that we were to pay an annuity each year for ten years. Is that right? A. Oh, no, no.

Q. We have to inject another factor into it: Namely, the probability that he will be living at any particular year? A. That is correct.

Q. Is that right? A. That is correct.

Q. So that when we assume that a person has a certain life expectancy we don't proceed on the assumption that he will [100] live that long.

A. I don't think you could draw that conclusion.

Q. Is this factor applicable with any mortality

(Testimony of George Frank Waites.)

table? Is the factor identical or does it vary with the mortality table, your factor here?

A. This factor varies in the fourth decimal place between mortality tables. Taking it to three decimal places it is the same for each mortality table. That is the value that is accepted by all actuaries in determining, say, quarterly payments on the value of annual payments.

Q. So, regardless of whether the correct table to be used would be any of those that you testified concerning this morning, the factor would be substantially the same with the exception of the fourth decimal place? A. That's right, yes.

Q. Now, on the subject of the table itself, you have testified this morning concerning five or six tables that are set out in Petitioner's Exhibit 9, first being the Combined Experience or Actuaries' Table, the table that the Regulations in question here are based upon. Now, your testimony was that a number of the mortality tables in existence are obsolete.

What do you mean when you say a table is obsolete?

A. By saying that a table is obsolete I mean that in its simplest terms, that the expectancies of living at each age have changed. [101]

Q. Which of the tables that we have in evidence and to which you testified this morning are not obsolete?

A. The nearest one coming to that is the 1937 Standard Annuity Mortality Table.

(Testimony of George Frank Waites.)

Q. But it is also obsolete, is it not, by your definition?

A. Any mortality table is obsolete, the same as a car depreciates as soon as it is sold.

Q. So that so far as an up-to-date mortality table that was not obsolete, there is no such thing in general use, isn't that correct?

A. In general, yes. Although the table that has been derived from experience nearest the situation at hand is the one that might be considered the most up to date.

Q. You are familiar with insurance companies' methods of computing reserves and the basis upon which policy premiums are arrived at, are you not?

A. That's right.

Q. That is part of your business, isn't it?

A. That's right.

Q. Let me ask you, if I were to go down to an insurance company today and take out an ordinary life policy, upon what basis would the premium be computed? By that I mean what mortality table would they use?

A. That premium would be computed on a mortality table [102] that nearest approached their own experience, and to that mortality table they would add a loading for taxes, a loading for expenses, and a loading for commissions.

Q. Well, what mortality table would that be?

A. With the larger companies they use their own experience, and the mortality table isn't generally known amongst the companies. It's just based

(Testimony of George Frank Waites.)

on their own experience to date.

Q. In other words, the table of mortality that you testified to are not generally used by insurance companies in arriving at their premiums. Is that correct?

A. The 1937 Standard Annuity Table as I have testified this morning is used by all insurance companies now as a basis for annuities and things of that nature.

Q. Is it used as a basis for life insurance policies? A. No.

Q. Just for annuities, is that correct?

A. That is correct.

Q. Isn't it true that the American Experience Table, for example, is the table prescribed by the California Insurance Code as the table by which insurance companies' reserves are to be calculated?

A. It was until last year.

Q. Until last year?

A. Yes. Mind you, that is just for reserves. [103]

Q. Yes, the American Experience Table.

A. That's right.

Q. Would you examine Petitioner's Exhibit 4 in evidence and tell me what the life expectancy according to the American Experience Table is of a person 66 years of age?

A. According to this table the life expectancy of a person aged 66 is 10.54 years.

Q. I now show you Petitioner's Exhibit 3 which is the combined or Actuaries' Experience Table on the basis of the regulations that we have in ques-

(Testimony of George Frank Waites.)

tion here. Would you tell me from examining that what the life expectancy of a person 66 would be?

A. 10.46.

Q. Very slight difference between the two, is that correct?

A. That's right. The reason for that is because one is over one hundred years old and the other is almost one hundred years old.

Q. Isn't it a fact that the American Experience Table is adopted by a number of states in this Union that have Insurance Codes covering this question as the official table upon which reserves are to be computed?

A. The majority of states have now discontinued the American Experience Table as a basis for reserves.

Q. What table do the majority of states now use so far [104] as life insurance is concerned?

A. The majority of the states now use the Commissioners' 1941 Standard Ordinary Table.

Q. And that table is not in evidence here, is that right?

A. No, that table is not in evidence.

The Court: It is true, is it not, that the more obsolete a table, provided it is used for calculating reserves, the greater reserves will be?

The Witness: Not necessarily. That is true as far as annuities are concerned. That is not necessarily true as far as life insurance is concerned.

The Court: I should think it would be. I mean, if you use an old actuarial table where the life ex-

(Testimony of George Frank Waites.)

pectancy is not as high as in the newer tables and you use that for the calculation of reserves for life insurance, life insurance reserves, you would necessarily have to get a larger amount of reserves.

The Witness: That doesn't necessarily follow. It depends on what we call the incident of the mortality. In other words, it depends just at what ages it hits.

I think possibly I could clarify the situation.

The Court: I think I see now, yes. I think I see. The reserves would be the same, but the point at which they would be gathered in would differ. Is that it? [105]

The Witness: Over the long run, yes.

The Court: I think I see, I don't know, I certainly hesitate to commit myself definitely on it.

By Mr. Hurley:

Q. Mr. Waites, do you have in your possession or in any of the texts that you have with you the Commissioners' 1941 Standard Ordinary Table of Mortality?

A. I think I can dig it up, yes. I think first of all, in using it, I had better explain something about it because none of these tables should be used without knowing a little about their background.

Now, if you would like me to proceed on that basis——

Q. As I understood it, that is the table that is used now by most states in prescribing reserves, in the mortality table used in computing reserves; is that correct?

A. That is correct, yes.

(Testimony of George Frank Waites.)

Q. Do you have the table there?

A. Yes.

As you noticed this morning, before going into the expectancies I described each mortality table on which the expectancies were derived in order to show just what factors entered into it. Now, I think it is only right that I should explain something about the Commissioners' 1941 Standard Ordinary Table to which you have referred.

Now, that table was based on another table called [106] Table "Z." Table "Z" was based on the mortality of life insurance companies for, I think it was from 1924 to 1934, something like that, and this Table "Z" corresponded to a basic table.

Now, that gave just about the actual mortality that the insurance companies were experiencing. However, the insurance companies said, "Oh, no, this won't do, because there is no leeway for us here. We want something that will give us greater mortality. At least we want a table that will give greater mortality than that shown by Table 'Z'."

For this purpose the Commissioners' 1941 Standard Ordinary table was developed, and with that as background and remembering that it is a loaded table for life insurance purposes, the expectancy is 71.01 years.

Q. That table is 1941, and it is only one year more than the table used by the Commissioner here which is less than one year difference in expectancy, is that correct?

A. That is correct.

Q. That is as late as 1941.

A. No, that is based on experience, as I indi-

(Testimony of George Frank Waites.)

cated, I think the experience ended around 1934 or 1936.

Q. I mean, the table was drawn up in 1941, and the Commissioners referred to there are the Insurance Commissioners of the various states. Is that correct? A. That is right. [107]

Q. Now, Mr. Waites, isn't it a fact that in compiling a table such as the 1937 Standard Annuity Table the table is likewise weighted the other way in favor of the insurance company, and the life expectancy is given an outside limit so that the company would not be called upon to be paying annuities far beyond what the ordinary person might be expected—the life expectancy of the ordinary person. Do you understand my question?

A. Yes, I think I understand your question.

Q. In other words, an annuity table, in order to prescribe a proper reserve for annuity purposes, you must be conservative and assume that the annuitants will outlive their life expectancy just as you testified that there is a tendency to be conservative in life insurance and assume that the man will die sooner. Isn't that a correct statement?

A. I think your question can be best answered in this manner: The nearest approach to the situation that we have on hand this morning is this: Where a man takes out insurance and provides that insurance will be payable to his wife, say, for example, in monthly installments, or periodic installments for life. Now then, in a case such as that the wife has no say in the selection of the annuity.

Testimony of George Frank Waites.)

Nevertheless, the experience under such annuities indicates that the 1937 Standard Annuity Table isn't conservative enough, they should be using it at least rated down one year, and practically all of the [108] major insurance companies now under such annuities are rating that 1937 Standard Annuity down two years, because of the fact that their annuitants are living longer.

The Court: Rating it down? I should think——

The Witness: By "rating it down" I mean if the individual's age is 64, they take the value shown at age 62. It's really setting it down rather than rating it down.

The Court: I think Mr. Hurley's question was with regard to the actuarial data used by the insurance companies themselves. Isn't it true that in life insurance policies those tables always are conservative in estimating an earlier death than perhaps the actual experience would warrant, and in case of annuities don't those tables actually used by the insurance companies in figuring their premiums assume a later death than their experience actually warrants?

The Witness: Only if you are buying an annuity from the insurance company. Under the options that I have indicated here, you are not buying an annuity, it is just one method whereby the payments are distributed.

By Mr. Hurley:

Q. I think this question will answer it, Mr. Waites:

(Testimony of George Frank Waites.)

Q. Isn't it true that insurance companies do not use annuity tables in determining life insurance rates, and similarly do not use life insurance tables in determining annuity rates?

A. That is correct. [109]

Q. In other words, Petitioner's Exhibit 9 which is a recapitulation of the various mortality tables we have in evidence, only two of these would be used by insurance companies in determining life insurance reserves or rates, the American Annuity Table, the Combined Annuity Table; and the 195 Standard Table wouldn't be used at all for anything but annuities.

A. I would say none of those tables would be used by insurance companies in determining rates.

Q. Certainly the annuity tables would not be used for life insurance rates. Is that correct?

A. That is correct, and the American Experience Mortality Table hasn't been used for determining rates for over 40 years.

Q. You mean none of the life insurance companies have used it? A. No.

Q. Your testimony is they make up their own tables. Is that right?

A. That's right, or use the tables that approximate their actual experience.

The Court: And such a table not only reflects their actual experience so far as the life of insureds are concerned but it is also considerably loaded.

The Witness: Very definitely, because they wait

(Testimony of George Frank Waites.)

to set something aside for epidemics and things of that [110] nature.

By Mr. Hurley:

Q. Mr. Waites, isn't it true that annuitants as a group are a select class of risks? By that I mean that the experience that insurance companies have had with annuitants and with the mortality rate of annuitants is not the same experience that you may have with the average run of persons, in that people who buy annuities are convinced that they will probably at least live if not outlive their life expectancy.

A. Yes, that is why they load their annuity rate so much, because they realize that the person is selecting against them.

Mr. Hurley: I think that is all on this point.

The Court: Mr. Taylor.

Mr. Taylor: Are you through, Mr. Hurley?

Mr. Hurley: Yes.

Redirect Examination

By Mr. Taylor:

Q. Mr. Waites, you were asked a question as to whether the use of the quarterly factor .375 which you testified was the proper quarterly factor resulted in a different valuation of the life estate than the use of the factor which the Commissioner used? Now, in the 90-day letter the Commissioner used—under the Actuaries' or Combined Experience Table, the quarterly factor 1.01488 and reached the value on an annual [111] income of \$9,260.99, \$70,-23.67 for the life estate.

(Testimony of George Frank Waites.)

Now, I show you Petitioner's Exhibit 11 and ask you to read to the Court the value which you reached for an annual income of \$9,260.99 under the Actuaries' or Combined Experience Table showing with the use of the quarterly factor .375.

A. The value for the Combined Experience of Actuaries' Table is \$73,161.82.

Q. In other words, there is a substantial difference in the use of the proper quarterly factor?

A. That is correct.

The Court: I wanted to ask the witness to clear up something.

You referred in your cross-examination, I think to the Commissioners' Table. In a proceedings of this Court the use of the word "Commissioner" usually refers to the Commissioner of Internal Revenue. When you used the word "Commissioner" the Commissioners' Table, to what Commission were you referring?

The Witness: That is the name given to the table, and the reference is to the Commissioners of Insurance.

The Court: That is what I thought.

All right, Mr. Taylor.

By Mr. Taylor:

Q. How do you know, Mr. Waites, that when the Commissioner uses the factor for quarterly payments 1.01488 that he takes [112] what you call the interest only into account and not the element of mortality?

A. Well, I think I can best answer that by

(Testimony of George Frank Waites.)

ferring to a book of interest tables. I have it here. This book is Glover, Part 1, "Tables of Applied Mathematics in Finance, Insurance Statistics," edited by James W. Glover, Ph.D., Professor of Mathematics and Insurance, University of Michigan, "Compound Interest Functions and Logarithms of Compound Interest Functions" and so on, here, published by Ann Arbor, Michigan, George Wahr, Publisher, 1930.

Q. Is that a standard book used by actuaries?

A. This is a standard book used by actuaries and accountants. Part 1 refers to compound interest functions only, and on Page 6 of Part 1 under 4 per cent and for the factor relating to quarterly payments there is the factor 1.01487744.

Now, if that were taken to the nearest place to coincide with the Commissioners' value, that would be 1.01488.

And in a similar manner, I haven't checked up on the semi-annual payments and the annual—are there monthly payments there?

Mr. Hurley: Yes, monthly.

The Witness: For semi-annual payments it gives factor 1.009902, and I think that coincides with the value of the Commissioner's schedule. [113]

By Mr. Taylor:

Q. The Regulations show for semi-annual payments the factor 1.00990. So that checks with Mr. Glover.

Now, you have testified on cross-examination and on direct examination also to the value of a life

(Testimony of George Frank Waites.)

annuity. That is the same as life estate, when you referred to Mrs. Koshland, is it not?

A. Yes.

Q. When you refer to life annuity in general here, you considered that the same as life estate?

A. Yes.

Q. Now, you testified in cross-examination, I believe you said any table is obsolete the same as an automobile depreciates as soon as it is sold. So the next day it is not quite as good, is second-hand.

Now, there are a good many mortality tables other than the ones that have been testified to here, are there not?

A. Oh, yes, there are numerous other mortality tables.

Q. And as an actuary in the course of your work you are familiar with a great many of them?

A. That is true.

Q. In fact, you are familiar with all of the ones that are in use?

A. Yes, that is true.

Q. Now, it is necessary as a practical matter to use some [114] mortality table, isn't it?

A. Oh, that is correct.

Q. And it is in accordance with established actuarial principles to use the most accurate one, that is, the one that most correctly reflects current experience, even though in a sense longevity may have increased since it was made?

A. That's right. As actuaries we always try to use the most current mortality table that will reflect the experience that we have to deal with.

(Testimony of George Frank Waites.)

Q. Now Mr. Hurley questioned you about the Commissioners' 1941 Ordinary Table. Is that the name?

A. The Commissioners' 1941 Standard Ordinary Table is the correct name.

Q. Will you state why you used the 1937 Standard Annuity Table in your consideration of this case?

A. There are two reasons. Well, the main reason is this: That the 1937 Standard Annuity Mortality Table reflects the most current experience that there is on annuitants, and that is borne out, as I indicated to Mr. Hurley, by the life insurance companies' experience with beneficiaries who have been elected by insureds to have their proceeds payable in monthly installments. Their statistics indicate that the 1937 Standard Annuity Mortality Table is not any too conservative for the payments of those proceeds, and installments in the form of a life annuity. [115]

Q. Let me make sure we understand it. You mean in a case where the person has taken out a life insurance policy and he dies, and under the policy there has been an election to pay the proceeds in installments over the lifetime of the beneficiary, the table which the insurance companies use to determine the amount of those installments is the 1937 Standard Annuity Table?

A. In most cases they use that table as a basis, but for current policies they are using it at one age lower, and in many cases at two ages lower.

(Testimony of George Frank Waites.)

Q. Was that true in 1944?

A. In 1944 I would say that they would be using it just as the Standard Table, with no reduction in age.

Q. When you say they use it one age lower or two ages lower, you mean they would take a female age 66, for example, and treat her as a female age 64 for the purpose of determining the amount to be paid her? A. That is correct, yes.

Q. And is the reason for that that their experience has been that, say, females age 66, and people in general live actually longer than the life expectancy indicated by the 1937 Standard Annuity Table? A. That is the way it is working out.

Q. And the table then in actual experience is not conservative enough, is it, in that longevity is actually in excess [116] of life expectancy indicated—the longevity of people is actually in excess of the life expectancy indicated in the table?

A. That is the experience of life insurance companies.

Q. Now, in the ordinary case no physical examination is needed to take out an annuity, is there?

A. Oh, no.

Q. They are issued by insurance companies without regard to the physical condition?

A. That is correct.

Q. The physical condition of the annuitant, and solely on the basis of the life expectancies as worked out in, say, tables like the 1937 Standard Annuity Table?

(Testimony of George Frank Waites.)

A. On the basis of the annuities based on the 1937 Standard Annuity Mortality Table.

Q. Now, I asked you, Mr. Waites, why you used this 1937 Standard Annuity Mortality Table in your consideration of this case. You were familiar, of course, with the 1941 Commissioners' Table?

A. Oh, yes.

Q. Will you indicate why you did not use that?

A. The reason I did not use the Commissioner's 1941 Standard Ordinary Table is that it is loaded. By "loaded," it assumes that there is going to be—well, a shorter life expectancy at each age. It is deliberately created that way [117] because it is used for life insurance.

Q. And the insurance companies anticipate that the loading does not hurt their client, so to speak, because they get the excess back out of dividends?

A. If it is a participating company.

Q. Did you consider the Commissioners' 1941 Table as a table based on the desire of insurance companies in life insurance matters to have an extra margin of safety rather than a table based on actual experience in connection with mortality?

A. Would you remind repeating that question?

Mr. Hurley: If the Court please, this might be an opportune time to object to the line of examination. Counsel has been consistently leading the witness.

Mr. Taylor: Your Honor——

The Court: Counsel will be cautioned.

Go ahead, rephrase your question. Evidently you

(Testimony of George Frank Waites.)

didn't lead him very successfully, since the witness asked for the question to be repeated.

Go ahead.

Mr. Taylor: I wish I were more of an actuary and I would be glad to accommodate Mr. Hurley.

The Court: Go ahead, Mr. Taylor.

Mr. Taylor: Would you repeat the question for the witness.

(Question read.) [118]

A. That is correct. In other words, I think I can clarify it a little. I will repeat what I said before.

The reason I did not use the Commissioners' 194 Standard Ordinary Table is because it does not reflect current mortality inasmuch as it has a loading in it to provide for the hazard of greater number of deaths that might be indicated.

By Mr. Taylor:

Q. To take care of events such as epidemics, is that your point?

A. Yes, epidemics, accidents and catastrophes; things of that nature.

Q. Yes. Your failure to use that table was not an oversight then?

A. Oh, no. I deliberately avoided using it for that reason.

Q. Because you didn't think it applicable?

A. No, no. It's not applicable under any circumstances. I wouldn't think.

Q. Now, Mr. Hurley questioned you as to whether the 1937 Standard Annuity Table might

(Testimony of George Frank Waites.)

not be what you call "loaded" in favor of longer life for annuitants. Isn't it a fact, or is it a fact that actual experience since 1937 indicates that the longevity rate among all classes is in excess of that, and among all ages is in excess of that set forth in the 1937 Table for Expectancy of Life? [119]

A. Yes. People are living longer than that indicated under that table.

Q. So that table, if anything, is not loaded enough, is it, in favor of longevity?

A. Not for annuitants.

Q. And hence the insurance companies in the selling of annuities use that table but treat the applicants as having a lesser age than they actually have, in determining the rates?

A. And in addition to that——

Q. Is that correct?

A. That is correct. And in addition, they add other amounts to it to provide for any other contingencies that might arise.

Q. In other words, the loading is not in the table but the loading is in addition to the table?

A. That is correct.

Mr. Taylor: Your witness.

Recross-Examination

By Mr. Hurley:

Q. You say that the expectancy shown on an annuity table represents the actual life expectancy of an annuitant without any safety factor or loading at all? For example, I think that that table, the 1937

(Testimony of George Frank Waites.)

table shows a life expectancy of about 16 years for a woman of 66 years of age?

A. That is correct. [120]

Q. And you say that that represents actual experience, and there is no loading whatever in the table itself?

A. That is the experience of life insurance companies who are issuing a great many of them.

Q. That is the experience of life insurance companies? A. Companies.

Q. Is that life expectancy the actual life expectancy without any loading? A. Yes.

Q. Then let me ask you this question: What about life insurance tables that are, as you testified, loaded the other way? Then the loading does not in those cases appear in the tables either?

A. Oh, no, the loading appears in those tables.

Q. Can you explain the reason why in one instance the safety loading is not in the table, and in the other instance it is?

A. It depends what you are talking about. We have been talking about a number of things. A few minutes ago we were talking about reserves, and as a basis for reserves the Commissioners' Table is used in determining reserves and cash values, and in the Commissioners' Table the loading is in the table.

Now, the leading life insurance companies in building up their premiums, they use what they consider a true mortality [121] table, a table which they expect to reflect accurately their conditions,

(Testimony of George Frank Waites.)

and then they start loading that. They load it for all of the various contingencies that may arise. They load it for expenses, they load it for taxes, they load it for commissions. The result is the premium that you actually get quoted in that rate book.

Q. Then the loading does not start with the 1937 Table, but the loading starts with the insurance company's own table, is that correct?

Mr. Taylor: Do you mean the 1941 Table?

Mr. Hurley: I mean the 1937 Annuity Table.

A. I think we are talking about two different things. I am talking about the Standard Table, the Commissioners' Standard Ordinary Table. That is what we consider a standard table.

Mr. Taylor: Is that the 1941 one?

The Witness: Yes, the Commissioners' 1941.

By Mr. Hurley:

Q. The Insurance Commissioners' 1941 Table, is that what you are referring to?

A. Is the Commissioners' 1941 Standard Ordinary Table—what was the question?

Q. The question is simply this: That the 1937 Annuity Table reflects the experience of the company with annuitants plus a loading factor, and the life insurance tables reflect [122] life insurance experience plus a loading factor. That is, they are both similarly loaded for conservative insurance practice. Is that right? A. Substantially so.

Q. One further question on this factor and perhaps we can leave that.

I would like to pose a hypothetical question, Mr.

(Testimony of George Frank Waites.)

Waites, the same hypothetical question I posed before. Perhaps I didn't understand your answer correctly.

We have an annuity payable for a period of ten years, so much per year on an annual basis. Now, we apply no factor to that situation because it is computed on an annual basis.

Now, we have the same annuity computed on a quarterly basis because the annuity is payable quarterly, and we make an adjustment using the factor which we have mentioned before, 1.01488, which accounts for the difference between an annuity due once a year and an annuity due four times a year. Is that correct? A. That is correct.

Q. The use of money sooner and quicker than you would get it on an annual basis——

A. Provided the annual one is payable, first payment for the end of the year, I should say.

Q. Yes. Now, as I understand it, when we have a situation with a person with a ten-year life expectancy instead of [123] a term certain, we don't use the factor for quarterly payments but we use another factor which reflects the circumstance that we now have, namely, that the person may not live his life expectancy, is that correct, and then we arrive at that factor, .375, the factor that you used in arriving at your computation?

A. The factor of .375 is used for a life annuity.

Q. Yes, I understand. But I am assuming in this instance a person whose life expectancy would be ten years.

(Testimony of George Frank Waites.)

A. All right. Then if a person has a life expectancy of ten years the factor would be used just the same, for this reason: Possibly no payment might be received if they died between the inception of the annuity and the end of the first quarter. Therefore you will find that the factor of .375 is larger than the factor that you have there for the same reason that the annuity for a person whose life expectancy is ten years is smaller than the annuity that is payable over a term certain of ten years.

Q. In other words, in valuing, 1. An annuity for ten years term certain on a quarterly basis; and 2. Valuing an annuity for the life of a person with a ten-year expectancy, the value of the first annuity for the term certain on a quarterly basis would be more than the value of the annuity for a ten-year life expectancy. Isn't that logical, because you would be assured—— [124]

A. I think that is correct.

Q. Isn't that correct?

A. I think that is correct.

Mr. Taylor: May I have that question read?

Mr. Hurley: Would you read the question?

(Question read.)

By Mr. Hurley:

Q. In other words, the dispute as to the factor here, Mr. Waites, the Government has used one factor, you in your computation here have used another factor based upon what you say is the additional circumstance, namely, that the annuitant her-

(Testimony of George Frank Waites.)

self would not live her life expectancy. Is that right?

A. Oh, no, no, because you are confused between a term certain and expectancy. A life annuity isn't based on the expectancy. A life annuity is a series of payments depending on the probability that the individual is alive at the end of each year, discounted back at the rate of interest that is assumed.

Q. Yes, but I may be confused indeed——

A. The expectancy has nothing to do with the life annuity. They are two different things, just the same way that——

Q. When you value an annuity you use as a basis for that valuation the expectancy of the annuitant? A. Oh, no, no. [125]

Q. I am certainly confused on this point.

A. Because the expectancy and the life annuity are two different things, just like a fried egg is different from a poached egg.

Q. But they are both eggs, and we have a question here of valuing an annuity, and I assumed that we were proceeding upon the fact that she had a certain life expectancy in arriving at that value.

A. But in determining the value of a life annuity you do not use the expectancy. You use the probability that that person will be alive at the end of each year for the remainder of the table.

Q. In other words, the life expectancy of a person has nothing whatsoever to do with the value of the annuity. Is that correct?

(Testimony of George Frank Waites.)

A. Very indirectly. The only relation it has is that it comes from the same basic mortality table.

Q. So the mere fact that a person has a certain life expectancy under your 1937 Annuity Code wouldn't indicate in any respect the value of the annuity itself, and the mere fact that one table reflects the life expectancy of ten years and another one seven years, has nothing to do with it?

A. The only thing that would indicate, because as the expectancy grows, naturally the life annuity grows.

Q. Yes, I understand. [126]

Now, will you explain as simply as possible, because I am obviously confused, on this factor business, would you explain as simply as possible how the fact that a person may die before he received all of his quarterly payments, how that operates to increase the value of such an annuity rather than decrease it? That is, why this added factor which you have injected into the Commissioners' determination which only refers to the interest, as we have agreed, why that added factor which comes in, why that doesn't operate to reduce the value of the life annuity rather than increase the value of the life annuity?

A. Well, the only explanation for that really is in its mathematical derivation. That is an accepted mathematical fact which is proved in the textbook to which we referred this morning.

Now, possibly the simplest explanation in layman's language is this: That in the first year for the

(Testimony of George Frank Waites.)

first quarter you almost have a certainty of receiving it, the first quarterly payment. But on the last payment at the end of the table you practically have no chance of receiving it at the end of the mortality table, so that the averaging up of these gives the factor that we have here, .375.

Q. That is exactly what I understood. In other words, the fact is that the life tenants, so to speak, will not assuredly live out that period; therefore, the value of the [127] life estate actually is less than if she were certain to live out her life expectancy, so that the factor that you apply here——

A. I am not sure that that is altogether true. I wonder if you would reword the question again?

Q. Well, now, I hate to take the Court's time here, but I am searching for a logical basis for the application of this factor. The witness' testimony is to the effect that the possibility of the life tenant dying somewhere along the line is a possibility which must be reckoned with mathematically, and that accounts for an additional factor which must be taken.

The Court: It increases the value according to one computation, from \$70,000 to \$73,000.

Mr. Hurley: Yes, and actually it is, as I see it, logically that circumstance should operate to reduce the value of the life estate, because that is a contingency which would almost certainly reduce the value rather than to increase it. I am not at all certain, I can't see a logical basis for it.

The Witness: The factor itself has to be taken

(Testimony of George Frank Waites.)

into consideration together with the value of the annuity itself. In other words, if I might refer to—I have forgotten some of my theory behind this, if I might refer to this thing here——

Mr. Taylor: You mean “Life Contingencies”?

The Court: Gentlemen, we don’t have time for this. [128] We will call a recess right now and you study your lesson during the recess.

(Short recess.)

Mr. Hurley: If Your Honor please, I would like to ask the witness one more question.

The Court: All right.

By Mr. Hurley:

Q. Mr. Waites, is the difference between the quarterly factor 1.01488 used by the Commissioner in the Notice of Deficiency, and the factor used by you, .375, the mathematical result of giving effect to the possibility that the annuitant might die before she received all of the quarterly payments? Just simply answer yes or no.

A. May I have the question again?

Mr. Hurley: Would you read the question?

(Question read.)

A. I wonder if you would break your question into two parts there.

By Mr. Hurley:

Q. Well, may I ask this: Did you have an opportunity to get into the text there a little further so that you could elucidate on my last question before recess?

A. Oh, yes, yes.

(Testimony of George Frank Waites.)

Q. Then maybe we can go back just for a moment. What I am interested in is how the factor used results in a greater [129] value where you take into account the fact that the annuitant may die within this period. That is the question.

A. You are referring to the quarterly factor?

Q. Yes.

A. Well, that is directly related to the question of the factor against which it is applied. Now, take, for instance, if you had a life with an expectancy of ten years. Now then, the life annuity based on that, shall I say expectancy, of ten years, is lower in value than an annuity based on interest alone for the same period. Have you got that?

Q. Exactly. That was the conclusion I was endeavoring to reach.

A. Therefore, there is a larger quarterly factor applicable against that life annuity to make up for the fact that there is a larger probability of receiving the payments in the early part of the annuity.

Q. Very well. I understand exactly the position you are taking on this. Now, let me ask you one further question.

Is an annuity such as we have here for life worth more or less than a similar annuity for a term certain, measured by the same person's life expectancy? A. The life annuity is always——

Q. Assuming quarterly payments.

A. The life annuity—let's assume annual payments. The life annuity, assuming annual payments,

(Testimony of George Frank Waites.)

is always less than [130] the annuity certain for the expectancy.

Q. How about the situation with quarterly payments?

A. That depends on the rate of interest involved.

Q. Assuming the same rate of interest in both instances.

A. Also the age involved. At age 66 the effect is greater.

Q. More—what do you mean by that? The life estate is worth more, or is it worth less?

A. Well, you have to remember that the factor that you are using multiplies; whereas, the correct actuarial factor adds. So, the result is dependent on the number that you multiply by.

Q. Obviously. Is it more or less, however, with a life estate rather than an annuity for a term of years in this instance, at age 66?

A. At age 66 the factor for quarterly payments gives a larger result. That is, the true actuarial factor for quarterly payments derived from a life annuity is larger than the factor, the Commissioner's factor that you have there.

Q. In other words, you use a different factor with different years, that is, with different ages?

A. No. The factors are the same, but the result, the final result is dependent upon the number that you multiply the factor by in your case. [131]

Mr. Hurley: I have no further questions.

(Testimony of George Frank Waites.)

Redirect Examination

By Mr. Taylor:

Q. Mr. Waites, the 1941 Commissioners' Table is not used in determining the value of life estates or annuities?

A. I have never known it to be used. I have never used it myself.

Q. The answer is "No," is it? A. "No."

Q. Its use is by some life insurance companies in determining rates for life insurance policies?

A. As I indicated, they use their own tables for determining their rates.

Q. This table is used by them in determining their reserves?

A. It is used as a standard for reserves and valuations.

The Court: Now we are getting repetitious, aren't we? I think the witness already testified along that line. As I understood him to testify, it was used in determining reserves.

The Witness: That's right.

Mr. Taylor: I am simply leading up to the point, meeting some of the points which Mr. Hurley raised in his examination. I will try to keep this as succinct as I can.

By Mr. Taylor: [132]

Q. The 1941 Commissioners' Table is loaded by the insurance companies because they want larger reserves as a matter of safety? A. Yes.

Q. And the 1937 Standard Annuity Table, the experience, actual life experience under that, has

Testimony of George Frank Waites.)

Q. Is that longevity is in excess of that estimated under that table?

A. That is true, for annuitants.

The Court: That is repetitions.

Mr. Taylor: If Your Honor will bear with me, I must want to lead to this question:

By Mr. Taylor:

Q. So there is no loading under the 1937 Standard Annuity Table?

A. Oh, no. The 1937 Standard Annuity Table doesn't have any loading in it at all.

Q. All right now, Mr. Waites, is there a connection between life expectancies and the value of a life estate? Life expectancy and the value of a life estate?

A. If you mean value of annuity there, the connection is that they are both derived from the same mortality table.

Q. Will you indicate, is it an indispensable and inevitable connection?

A. Oh, yes, very definitely.

Q. Will you indicate just what that connection is? [133]

A. If the life expectancy increases, very definitely the life annuity also increases.

Q. So that in determining the valuation of a life annuity or the valuation of a life estate the life expectancy is most material and important?

A. As a guide in determining whether the annuity value is going to increase or not between tables.

(Testimony of George Frank Waites.)

Q. By "life annuity" do you mean the same as "life estate"? A. Yes.

Q. Well, now, will you indicate what that connection is?

A. The life expectancy can be described in two or three ways. One way of looking at it is that it is just the sum of the probability of living, sum to the end of the mortality table.

Another way of looking—its mathematical computation is as follows: If you refer to a mortality table, if you take the Column headed "Number Living" and sum that to the end of the table and then divide by the number living at the age, that would give you your expectancy.

Now, a life annuity is based on, as I indicated before, the probability of living, of being alive at the end of each period, discounted back. That gives the present value of it.

Q. Does the life expectancy enter into the probability [134] of being alive at the end of each period? A. Indirectly it does enter into it.

Q. What do you mean by "indirectly"?

A. Well, in the first place the life expectancy may be viewed as annuity at a zero rate of interest. In other words, if you have had no interest at all and if you had a payment of 1 per annum, then your life expectancy would give you the value of each of those payments.

Q. Would your life expectancy then be the same as the life annuity?

Testimony of George Frank Waites.)

A. It would be the same as the life annuity if you had applied the interest factor to it.

Q. I thought you said there was no interest factor in it.

A. There is no interest factor in the life expectancy. But if you apply the interest factor to the probability of being alive at the end of each year, then you would have your annuity.

Q. A life annuity then is the life expectancy with the interest factor applied thereto?

A. Yes, for each year.

Q. So that the life expectancy is an indispensable part of the life annuity? A. Yes.

Q. So that as the life expectancy increases the valuation [135] of the life annuity automatically increases? A. Oh, very definitely, yes.

Q. And so that where, under the mortality tables introduced into evidence, it would show an increase in the life expectancy, that would automatically result in an increase of the value of the life state or of the life annuity?

A. Oh, very definitely, yes.

Mr. Taylor: No further questions.

Mr. Hurley: That is all.

The Court: That is all.

(Witness excused.)

The Court: Petitioner rests?

Mr. Taylor: Petitioner rests.

Mr. Hurley: Respondent rests.

* *

[Endorsed]: Filed Apr. 12, 1948. [136]

PETITIONER'S EXHIBIT No. 3

Table XXII.

COMBINED EXPERIENCE TABLE OF
MORTALITY

Age	lx	dx	Expectation
10.....	100,000	676	48.36
11.....	99,324	674	47.68
12.....	98,650	672	47.01
13.....	97,978	671	46.33
14.....	97,307	671	45.64
15.....	96,636	671	44.96
16.....	95,965	672	44.27
17.....	95,293	673	43.58
18.....	94,620	675	42.88
19.....	93,945	677	42.19
20.....	93,268	680	41.49
21.....	92,588	683	40.79
22.....	91,905	686	40.09
23.....	91,219	690	39.39
24.....	90,529	694	38.68
25.....	89,835	698	37.98
26.....	89,137	703	37.27
27.....	88,434	708	36.56
28.....	87,726	714	35.86
29.....	87,012	720	35.15
30.....	86,292	727	34.43
31.....	85,565	734	33.72
32.....	84,831	742	33.01
33.....	84,089	750	32.30
34.....	83,339	758	31.58
35.....	82,581	767	30.87
36.....	81,814	776	30.15
37.....	81,038	785	29.44
38.....	80,253	795	28.72
39.....	79,458	805	28.00
40.....	78,653	815	27.28
41.....	77,838	826	26.56
42.....	77,012	839	25.84
43.....	76,173	857	25.12

Petitioner's Exhibit No. 3—(Continued)

Age	lx	dx	Expectation
44.....	75,316	881	24.40
45.....	74,435	909	23.69
46.....	73,526	944	22.97
47.....	72,582	981	22.27
48.....	71,601	1,021	21.56
49.....	70,580	1,063	20.87
50.....	69,517	1,108	20.18
51.....	68,409	1,156	19.50
52.....	67,253	1,207	18.82
53.....	66,046	1,261	18.16
54.....	64,785	1,316	17.50
55.....	63,469	1,375	16.86
56.....	62,094	1,436	16.22
57.....	60,658	1,497	15.59
58.....	59,161	1,561	14.97
59.....	57,600	1,627	14.37
60.....	55,973	1,698	13.77
61.....	54,275	1,770	13.18
62.....	52,505	1,844	12.61
63.....	50,661	1,917	12.05
64.....	48,744	1,990	11.51
65.....	46,754	2,061	10.97
66.....	44,693	2,128	10.46
67.....	42,565	2,191	9.96
68.....	40,374	2,246	9.47
69.....	38,128	2,291	9.00
70.....	35,837	2,327	8.54
71.....	33,510	2,351	8.10
72.....	31,159	2,362	7.67
73.....	28,797	2,358	7.26
74.....	26,439	2,339	6.86
75.....	24,100	2,303	6.48
76.....	21,797	2,249	6.11
77.....	19,548	2,179	5.76
78.....	17,369	2,092	5.42
79.....	15,277	1,987	5.09
80.....	13,290	1,866	4.78
81.....	11,424	1,730	4.48
82.....	9,694	1,582	4.18

Petitioner's Exhibit No. 3—(Continued)

Age	lx	dx	Expectation
83.....	8,112	1,427	3.90
84.....	6,685	1,268	3.63
85.....	5,417	1,111	3.36
86.....	4,306	958	3.10
87.....	3,348	811	2.84
88.....	2,537	673	2.59
89.....	1,864	545	2.35
90.....	1,319	427	2.11
91.....	892	322	1.89
92.....	570	231	1.67
93.....	339	155	1.47
94.....	184	95	1.28
95.....	89	52	1.12
96.....	37	24	.99
97.....	13	9	.89
98.....	4	3	.75
99.....	1	1	.50

 PETITIONER'S EXHIBIT No. 4

Appendix B
MORTALITY TABLES
American Experience Table

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
10	100,000	749	.007490	48.72
11	99,251	746	.007516	48.08
12	98,505	743	.007543	47.45
13	97,762	740	.007569	46.80
14	97,022	737	.007596	46.16
15	96,285	735	.007634	45.50
16	95,550	732	.007661	44.85
17	94,818	729	.007688	44.19
18	94,089	727	.007727	43.53
19	93,362	725	.007765	42.87

Petitioner's Exhibit No. 4—(Continued)

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
20	92,637	723	.007805	42.20
21	91,914	722	.007855	41.53
22	91,192	721	.007906	40.85
23	90,471	720	.007958	40.17
24	89,751	719	.008011	39.49
25	89,032	718	.008065	38.81
26	88,314	718	.008130	38.12
27	87,596	718	.008197	37.43
28	86,878	718	.008264	36.73
29	86,160	719	.008345	36.03
30	85,441	720	.008427	35.33
31	84,721	721	.008510	34.63
32	84,000	723	.008607	33.92
33	83,227	726	.008718	33.21
34	82,551	729	.008831	32.50
35	81,822	732	.008946	31.78
36	81,090	737	.009089	31.07
37	80,353	742	.009234	30.35
38	79,611	749	.009408	29.62
39	78,862	756	.009586	28.90
40	78,106	765	.009794	28.18
41	77,341	774	.010008	27.45
42	76,567	785	.010252	26.72
43	75,782	797	.010517	26.00
44	74,985	812	.010829	25.27
45	74,173	828	.011163	24.54
46	73,345	848	.011562	23.81
47	72,497	870	.012000	23.08
48	71,627	896	.012509	22.36
49	70,731	927	.013106	21.63
50	69,804	962	.013781	20.91
51	68,842	1,001	.014541	20.20
52	67,841	1,044	.015389	19.49
53	66,797	1,091	.016333	18.79
54	65,706	1,143	.017396	18.09
55	64,563	1,199	.018571	17.40
56	63,364	1,260	.019885	16.72
57	62,104	1,325	.021335	16.05

Petitioner's Exhibit No. 4—(Continued)

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
58	60,779	1,394	.022936	15.39
59	59,385	1,468	.024720	14.74
60	57,917	1,546	.026693	14.10
61	56,371	1,628	.028880	13.47
62	54,743	1,713	.031292	12.86
63	53,030	1,800	.033943	12.26
64	51,230	1,889	.036873	11.67
65	49,341	1,980	.040129	11.10
66	47,361	2,070	.043707	10.54
67	45,291	2,158	.047647	10.00
68	43,133	2,243	.052002	9.47
69	40,890	2,321	.056762	8.97
70	38,569	2,391	.061993	8.48
71	36,178	2,448	.067665	8.00
72	33,730	2,487	.073733	7.55
73	31,242	2,505	.080178	7.11
74	28,738	2,501	.087028	6.68
75	26,237	2,476	.094371	6.27
76	23,761	2,431	.102311	5.88
77	21,330	2,369	.111064	5.49
78	18,961	2,291	.120827	5.11
79	16,670	2,196	.131734	4.74
80	14,474	2,091	.144466	4.39
81	12,383	1,964	.158605	4.05
82	10,419	1,816	.174297	3.71
83	8,603	1,648	.191561	3.39
84	6,955	1,470	.211359	3.08
85	5,485	1,292	.235552	2.77
86	4,193	1,114	.265681	2.47
87	3,079	933	.303020	2.18
88	2,146	744	.346692	1.91
89	1,402	555	.395863	1.66
90	847	385	.454545	1.42
91	462	246	.532468	1.19
92	216	137	.634259	.98
93	79	58	.734177	.80
94	21	18	.857143	.64
95	3	3	1.000000	.50

PETITIONER'S EXHIBIT No. 5

AMERICAN ANNUITANTS' TABLE
(ULTIMATE)

Male

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
25	100,000	431	.00431	41.71
26	99,569	440	.00442	40.89
27	99,129	451	.00455	40.07
28	98,678	462	.00468	39.25
29	98,216	474	.00483	38.44
30	97,742	488	.00499	37.62
31	97,254	502	.00516	36.81
32	96,752	518	.00535	35.99
33	96,234	534	.00555	35.18
34	95,700	551	.00576	34.37
35	95,149	571	.00600	33.57
36	94,578	592	.00626	32.77
37	93,986	615	.00654	31.98
38	93,371	639	.00684	31.18
39	92,732	664	.00716	30.40
40	92,068	691	.00751	29.61
41	91,377	722	.00790	28.83
42	90,665	753	.00831	28.06
43	89,902	788	.00877	27.29
44	89,114	823	.00924	26.53
45	88,291	863	.00978	25.77
46	87,428	904	.01034	25.02
47	86,524	949	.01097	24.27
48	85,575	997	.01165	23.54
49	84,578	1,045	.01236	22.81
50	83,533	1,098	.01315	22.09
51	82,435	1,154	.01400	21.38
52	81,281	1,214	.01493	20.67
53	80,067	1,274	.01591	19.98
54	78,793	1,340	.01701	19.29
55	77,453	1,407	.01817	18.62
56	76,046	1,478	.01944	17.95

Petitioner's Exhibit No. 5—(Continued)

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
57	74,568	1,552	.02081	17.30
58	73,016	1,628	.02230	16.66
59	71,388	1,706	.02390	16.02
60	69,682	1,788	.02566	15.40
61	67,894	1,869	.02753	14.80
62	66,025	1,952	.02956	14.20
63	64,073	2,035	.03176	13.62
64	62,038	2,119	.03415	13.05
65	59,919	2,201	.03673	12.49
66	57,718	2,280	.03950	11.95
67	55,438	2,356	.04250	11.42
68	53,082	2,430	.04577	10.91
69	50,652	2,496	.04927	10.41
70	48,156	2,555	.05305	9.92
71	45,601	2,607	.05716	9.45
72	42,994	2,646	.06155	8.99
73	40,348	2,675	.06631	8.55
74	37,673	2,692	.07145	8.12
75	34,981	2,693	.07698	7.70
76	32,288	2,679	.08296	7.30
77	29,609	2,645	.08933	6.92
78	26,964	2,595	.09625	6.55
79	24,369	2,527	.10370	6.19
80	21,842	2,439	.11165	5.85
81	19,403	2,333	.12023	5.52
82	17,070	2,209	.12939	5.21
83	14,861	2,069	.13925	4.91
84	12,792	1,917	.14985	4.63
85	10,875	1,752	.16112	4.35
86	9,123	1,580	.17322	4.09
87	7,543	1,403	.18606	3.85
88	6,140	1,227	.19977	3.61
89	4,913	1,054	.21445	3.39
90	3,859	888	.23004	3.17
91	2,971	733	.24675	2.97
92	2,238	591	.26397	2.78
93	1,647	466	.28272	2.60
94	1,181	357	.30207	2.43

Petitioner's Exhibit No. 5—(Continued)

Age	Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
95	824	266	.32306	2.27
96	558	192	.34426	2.12
97	366	134	.36667	1.97
98	232	91	.39035	1.81
99	141	59	.41727	1.66
100	82	37	.45679	1.50
101	45	23	.50000	1.32
102	22	12	.54545	1.18
103	10	6	.60000	1.00
104	4	3	.75000	.75
105	1	1	1.00000	.50

PETITIONER'S EXHIBIT No. 6

COMBINED ANNUITY TABLE

—Age— Male Female		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
10	14	100,000	153	.00153	58.10
11	15	99,847	157	.00157	57.19
12	16	99,690	161	.00162	56.28
13	17	99,529	164	.00165	55.37
14	18	99,365	168	.00169	54.46
15	19	99,197	173	.00174	53.55
16	20	90,024	177	.00179	52.64
17	21	98,847	183	.00185	51.74
18	22	98,664	188	.00191	50.83
19	23	98,476	194	.00197	49.93
20	24	98,282	201	.00205	49.02
21	25	98,081	207	.00211	48.12
22	26	97,874	210	.00215	47.22
23	27	97,664	213	.00218	46.32
24	28	97,451	214	.00220	45.42
25	29	97,237	216	.00222	44.52
26	30	97,021	216	.00223	43.62
27	31	96,805	217	.00224	42.72

Petitioner's Exhibit No. 6—(Continued)

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectatio of Life
Male	Female				
28	32	96,588	219	.00227	41.81
29	33	96,369	223	.00231	40.91
30	34	96,146	227	.00236	40.00
31	35	95,919	234	.00244	39.09
32	36	95,685	244	.00255	38.19
33	37	95,441	257	.00269	37.28
34	38	95,184	274	.00288	36.28
35	39	94,910	294	.00310	35.49
36	40	94,616	318	.00336	34.60
37	41	94,298	343	.00364	33.71
38	42	93,955	371	.00395	32.83
39	43	93,584	401	.00428	31.96
40	44	93,183	432	.00464	31.10
41	45	92,751	467	.00503	30.24
42	46	92,284	503	.00545	29.39
43	47	91,781	542	.00590	28.55
44	48	91,239	583	.00639	27.71
45	49	90,656	628	.00693	26.89
46	50	90,028	676	.00751	26.07
47	51	89,352	727	.00814	25.27
48	52	88,625	782	.00882	24.47
49	53	87,843	839	.00955	23.68
50	54	84,004	900	.01035	22.91
51	55	86,104	965	.01121	22.14
52	56	85,139	1,034	.01215	21.39
53	57	84,105	1,107	.01316	20.64
54	58	82,998	1,184	.01426	19.91
55	59	81,814	1,264	.01545	19.19
56	60	80,550	1,348	.01673	18.49
57	61	79,202	1,435	.01812	17.79
58	62	77,767	1,527	.01963	17.11
59	63	76,240	1,621	.02126	16.44
60	64	74,619	1,718	.02302	15.79
61	65	72,901	1,817	.02493	15.15
62	66	71,084	1,919	.02700	14.52
63	67	69,165	2,022	.02923	13.91
64	68	67,143	2,124	.03164	13.32

Petitioner's Exhibit No. 6—(Continued)

—Age—		Number Living	Number Dying	Yearly	Complete
Male	Female			Probability of Dying	Expectation of Life
65	69	65,019	2,227	.03425	12.74
66	70	62,792	2,328	.03707	12.17
67	71	60,464	2,426	.04012	11.62
68	72	58,038	2,519	.04341	11.08
69	73	55,519	2,608	.04697	10.56
70	74	52,911	2,688	.05081	10.06
71	75	50,223	2,760	.05495	9.57
72	76	47,463	2,821	.05943	9.10
73	77	44,642	2,868	.06425	8.64
74	78	41,774	2,901	.06945	8.20
75	79	38,873	2,918	.07506	7.78
76	80	35,955	2,916	.08109	7.37
77	81	33,039	2,894	.08759	6.97
78	82	30,145	2,851	.09458	6.60
79	83	27,294	2,787	.10210	6.23
80	84	24,507	2,700	.11018	5.88
81	85	21,807	2,592	.11886	5.55
82	86	19,215	2,463	.12817	5.23
83	87	16,752	2,314	.13814	4.93
84	88	14,438	2,149	.14883	4.64
85	89	12,289	1,970	.16027	4.36
86	90	10,319	1,780	.17249	4.10
87	91	8,539	1,584	.18553	3.85
88	92	6,955	1,387	.19944	3.61
89	93	5,568	1,193	.21425	3.39
90	94	4,375	1,006	.22999	3.18
91	95	3,369	831	.24669	2.97
92	96	2,538	671	.26439	2.79
93	97	1,867	529	.28310	2.61
94	98	1,338	405	.30285	2.44
95	99	933	302	.32364	2.28
96	100	631	218	.34548	2.13
97	101	413	152	.36835	2.00
98	102	261	102	.39225	1.87
99	103	159	66	.41712	1.75
100	104	93	41	.44294	1.63
101	105	52	24	.46963	1.52
102	106	28	14	.49712	1.39

Petitioner's Exhibit No. 6—(Continued)

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
Male	Female				
103	107	14	7	.52613	1.29
104	108	7	4	.55409	1.07
105	109	3	2	.58331	.83
106	110	1	1	1.00000	.50

 PETITIONER'S EXHIBIT No. 7

1937 STANDARD ANNUITY TABLE

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
Male	Female				
5	10	1,000,000	1,234	.001234	65.08
6	11	998,766	1,241	.001243	64.16
7	12	997,525	1,247	.001250	63.24
8	13	996,278	1,250	.001255	62.32
9	14	995,028	1,250	.001256	61.40
10	15	993,778	1,249	.001257	60.48
11	16	992,529	1,247	.001257	59.55
12	17	991,282	1,246	.001257	58.63
13	18	990,036	1,244	.001257	57.70
14	19	988,792	1,245	.001259	56.77
15	20	987,547	1,246	.001262	55.84
16	21	986,301	1,250	.001267	54.91
17	22	985,051	1,258	.001277	53.98
18	23	983,793	1,269	.001290	53.05
19	24	982,524	1,285	.001308	52.12
20	25	981,239	1,306	.001331	51.18
21	26	979,933	1,333	.001360	50.25
22	27	978,600	1,368	.001398	49.32
23	28	977,232	1,409	.001442	48.39
24	29	975,823	1,460	.001496	47.46
25	30	974,363	1,521	.001561	46.53
26	31	972,842	1,590	.001634	45.60
27	32	971,252	1,672	.001721	44.67
28	33	969,580	1,767	.001822	43.75

Petitioner's Exhibit No. 7—(Continued)

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
Male	Female				
29	34	967,813	1,874	.001936	42.83
30	35	965,939	1,995	.002065	41.91
31	36	963,944	2,132	.002212	41.00
32	37	961,812	2,286	.002377	40.19
33	38	959,526	2,458	.002562	39.18
34	39	957,068	2,644	.002763	38.28
35	40	954,424	2,845	.002981	37.38
36	41	951,579	3,060	.003216	36.49
37	42	948,519	3,291	.003470	35.61
38	43	945,228	3,537	.003742	34.73
39	44	941,691	3,802	.004037	33.86
40	45	937,889	4,085	.004356	33.00
41	46	933,804	4,388	.004699	32.14
42	47	929,416	4,710	.005058	31.29
43	48	924,706	5,056	.005468	30.44
44	49	919,650	5,424	.005898	29.61
45	50	914,226	5,816	.006362	28.78
46	51	908,410	6,234	.006863	27.96
47	52	902,176	6,679	.007403	27.15
48	53	895,497	7,149	.007983	26.35
49	54	888,348	7,651	.008613	25.56
50	55	880,697	8,180	.009288	24.78
51	56	872,517	8,741	.010018	24.01
52	57	863,776	9,333	.010805	23.24
53	58	854,443	9,957	.011653	22.49
54	59	844,486	10,612	.012566	21.75
55	60	833,874	11,302	.013554	21.02
56	61	822,572	12,021	.014614	20.30
57	62	810,551	12,774	.015760	19.60
58	63	797,777	13,556	.016992	18.90
59	64	784,221	14,368	.018321	18.22
60	65	769,853	15,207	.019753	17.55
61	66	754,646	16,072	.021297	16.90
62	67	738,574	16,956	.022958	16.25
63	68	721,618	17,859	.024749	15.62
64	69	703,759	18,773	.026675	15.01
65	70	684,986	19,694	.028751	14.40

Petitioner's Exhibit No. 7—(Continued)

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
Male	Female				
66	71	666,292	20,615	.030986	13.81
67	72	644,677	21,526	.033390	13.24
68	73	623,151	22,420	.035978	12.68
69	74	600,731	23,286	.038763	12.14
70	75	577,445	24,113	.041758	11.60
71	76	553,332	24,889	.044980	11.09
72	77	528,443	25,600	.048444	10.59
73	78	502,843	26,232	.052167	10.10
74	79	476,611	26,770	.056167	9.63
75	80	449,841	27,199	.060464	9.17
76	81	422,642	27,506	.065081	8.73
77	82	395,136	27,672	.070032	8.30
78	83	367,464	27,688	.075349	7.89
79	84	339,776	27,539	.081050	7.49
80	85	312,237	27,215	.087161	7.11
81	86	285,022	26,709	.093709	6.74
82	87	258,313	26,018	.100723	6.39
83	88	232,295	25,141	.108229	6.05
84	89	207,154	24,083	.116257	5.72
85	90	183,071	22,854	.124837	5.41
86	91	160,217	21,469	.134000	5.11
87	92	138,748	19,950	.143786	4.82
88	93	118,798	18,320	.154211	4.54
89	94	100,478	16,611	.165320	4.28
90	95	83,867	14,856	.177138	4.03
91	96	69,011	13,092	.189709	3.79
92	97	55,919	11,355	.203062	3.56
93	98	44,564	9,680	.217216	3.34
94	99	34,884	8,100	.232198	3.13
95	100	26,784	6,644	.248059	2.92
96	101	20,140	5,333	.264796	2.72
97	102	14,807	4,198	.283515	2.52
98	103	10,609	3,244	.305778	2.32
99	104	7,365	2,244	.331840	2.12
100	105	4,921	1,782	.362122	1.93
101	106	3,139	1,248	.397579	1.74
102	107	1,891	830	.438921	1.55

Petitioner's Exhibit No. 7—(Continued)

—Age—		Number Living	Number Dying	Yearly Probability of Dying	Complete Expectation of Life
Male	Female				
103	108	1,061	517	.487276	1.37
104	109	544	295	.542279	1.20
105	110	249	152	.610442	1.04
106	111	97	67	.690722	.88
107	112	30	24	.800000	.73
108	113	6	5	.833333	.67
109	114	1	1	1.000000	.50
110	115	0			

PETITIONER'S EXHIBIT No. 8

Complete Expectancies of Life Under Certain
Standard Mortality Tables, for Various Ages

Mortality Table	—Ages—			
	40	50	60	66
Combined Experience of Actuaries' ..	27.28	20.18	13.77	10.46
American Experience	28.18	20.91	14.10	10.54
ns. Com. 1941 Table.....				11.01
American Annuitants'	29.61	22.09	15.40	11.95
Combined Annuity—				
Male	31.10	22.91	15.79	12.17
Female	34.60	26.07	18.49	14.52
937 Standard Annuity—				
Male	33.00	24.78	17.55	13.81
Female	37.38	28.78	21.02	16.90

PETITIONER'S EXHIBIT No. 9

Present Values under Various Mortality Tables of an Annuity of \$1.00 per annum Payable for the Lifetime of an Annuitant age 66 at the Commencement of the Annuity, Assuming 4% Compound Interest.

(Discounting Future Payments Upon the Basis of Compound Interest at the Rate of 4% a Year.)

Mortality Table	Annual Payments, first payment at end of first year	Quarterly Payments, first payment at end of first quarter
Combined Experience		
or Actuaries	7.525	7.900
American Experience	7.616	7.991
American Annuitants'	8.387	8.762
Combined Annuity—		
Male	8.526	8.901
Female	9.815	10.190
1937 Standard Annuity—		
Male	9.411	9.786
Female	10.974	11.349

The actuarial factor for quarterly payments is .375. The values for quarterly payments have been obtained by adding this factor to the values for annual payments.

CHAPTER VII

PREMIUMS AND PREMIUMS PAYABLE
 THAN ONCE A YEAR. VALUES OF
 SUBJECT TO PREMIUMS PAY.
 MORE THAN ONCE A YEAR

annuities payable fractionally through-
 out the year. In practice, both annuities and pre-
 miums are paid at more frequent intervals and it is
 necessary to make the modifications that must be
 made in the formulae to allow for this difference
 between an annuity of 1 per annum payable

at the end of successive
 intervals of $\frac{1}{m}$

of this annuity by $a_x^{(m)}$ we have

$$a_x^{(m)} = 1 + \frac{m-1}{m} D_x + \frac{m^2-1}{2m} \frac{dD_x}{dx} + \dots$$

$$a_x^{(m)} = 1 + \frac{m-1}{m} D_x + \frac{m^2-1}{2m} \frac{dD_x}{dx} + \dots$$

ANNUITIES PAYABLE

Let us write $D_x = \frac{dD_x}{dx}$

$$a_x^{(m)} = a_x + \frac{m-1}{2m} D_x + \dots$$

An alternative expression can be

$$a_x^{(m)} = 1 + \frac{1}{m} \left[\frac{m-1}{2} D_x + \frac{m^2-1}{6} \frac{d^2D_x}{dx^2} + \dots \right]$$

$$a_x^{(m)} = 1 + \frac{m-1}{2m} D_x + \frac{m^2-1}{6m^2} \frac{d^2D_x}{dx^2} + \dots$$

It will be seen from formula (3) that if the terms
 in the successive differences $\Delta^2 a_x^{(m)}$ are
 neglected the resulting approximation to the value of $a_x^{(m)}$ is
 in each case

This approximation is the one in common use in practice,
 it being generally unnecessary to employ a more accurate value
 (On the basis of the 11% Table and 4 per cent. interest the value
 of the term $\frac{m^2-1}{6m^2} \frac{d^2D_x}{dx^2}$ when $m=4$ is .0029 when $x=30$, and
 .0046 when $x=60$.)

3. The corresponding value of the annuity-due payable at
 monthly intervals is

$$a_x^{(12)} = 1 + \frac{m-1}{2m} D_x + \frac{m^2-1}{6m^2} \frac{d^2D_x}{dx^2} + \dots$$

whence, using the practical approximation for $a_x^{(m)}$

PETITIONER'S EXHIBIT No. 11

Present Values of Annuities Payable for the Lifetime of an Annuitant Age 66 at the Commencement of the Annuity, under Various Mortality Tables with 4% Compound Interest.

(Discounting Future Payments Upon the Basis of Compound Interest at the Rate of 4% a Year.)

Payments made annually, First Payment at the
End of First Year

Amount of Annuity.....	\$ 9,260.99	\$ 15,000.00
Mortality Table		
Combined Experience or Actuaries.....	69,688.95	112,875.00
American Experience	70,531.70	114,240.00
American Annuitants'	77,671.92	125,805.00
Combined Annuity—		
Male	78,959.20	127,890.00
Female	90,896.62	147,225.00
1937 Standard Annuity—		
Male	87,155.18	141,165.00
Female	101,630.10	164,610.00

Payments made quarterly, First Payment at the
End of First Quarter

Amount of Annuity	\$ 9,260.99	\$ 15,000.00
Mortality Table		
Combined Experience or Actuaries.....	73,161.82	118,500.00
American Experience	74,004.57	119,865.00
American Annuitants'	81,144.79	131,430.00
Combined Annuity—		
Male	82,432.07	133,515.00
Female	94,369.49	152,850.00
1937 Standard Annuity—		
Male	90,628.05	146,790.00
Female	105,102.98	170,235.00

[Endorsed]: No. 12228. United States Court of Appeals for the Ninth Circuit. Estate of Abraham Koshland, Deceased, Jesse Koshland, Executor, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed April 19, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

The United States Court of Appeals
for the Ninth Circuit

No. 12,228

ESTATE OF ABRAHAM KOSHLAND, Deceased,
JESSE KOSHLAND, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF THE PORTIONS OF THE
RECORD TO BE PRINTED

Comes now the petitioner above named by its attorneys of record and designates the following portions of the record as the only portions material to the consideration of the petition for review and requests that only such designated portions be printed:

1. Docket entries. (Document No. 1.)

2. Pleadings:

(a) Amended petition. (Document No. 11.)

(b) Notice of deficiency attached to the original petition as Exhibit A and referred to in the amended petition. (Portion of Document No. 2.)

(c) Declaration of Trust dated December 26, 1922, attached to the original petition as Exhibit B and referred to in the amended petition. (Portion of Document No. 2.)

(d) Amended to said Declaration of Trust entitled "Memorandum of Declaration of Trust" dated December 26, 1923, attached to the original petition as Exhibit C and referred to in said amended petition. (Portion of Document No. 2.)

(e) Answer to amended petition. (Document No. 12.)

3. Stipulation of Facts filed with the Tax Court at the hearing on March 23, 1948, (Official Report of Proceedings at the Hearing, pp 17-18), except that there shall be excluded and not made a part of the printed record, the estate tax return, Exhibit A(1), of said Stipulation of Facts and the claim for refund, Exhibit D, of said Stipulation of Facts. (Portion of Document No. 9.)

4. Motion to Amend Record and Stipulation of Facts attached thereto filed with the Tax Court on May 5, 1948. (Document No. 15.)

5. Findings of fact and opinion of The Tax Court of the United States (11 Tax Court No. 109). (Document No. 22.)

6. Decision of The Tax Court of the United States. (Document No. 28.)

7. Petition for Review. (Document No. 29.)

8. Notice of Filing Petition for Review. (Document No. 31.)

9. Designation of Contents of Record on Review. (Document No. 32.)

10. Notice of Filing Designation of Contents of Record on Review. (Document No. 33.)

11. Statement of Points to be Relied on Upon Review. (Document No. 30.)

12. Notice of Filing Statement of Points to be Relied on Upon Review. (Document No. 34.)

13. The following exhibits introduced in evidence at the hearing before the Tax Court: (Portions of Document No. 10).

(a) Petitioner's Exhibit 3—Actuaries' or Combined Experience Table of Mortality.

(b) Petitioner's Exhibit 4—American Experience Table of Mortality.

(c) Petitioner's Exhibit 5—American Annuitants' Table, Ultimate Male.

(d) Petitioner's Exhibit 6—Combined Annuity Mortality Table.

(e) Petitioner's Exhibit 7—1937 Standard Annuity Mortality Table.

(f) Petitioner's Exhibit 8—Table entitled "Complete Expectancies of Life Under Certain Standard Mortality Tables, for Various Ages."

(g) Petitioner's Exhibit 9—Table entitled "Present Values Under Various Mortality Tables of an Annuity of \$1 per annum Payable for the Lifetime of an Annuitant Age 66 at the Commencement of the Annuity, Assuming 4% Compound Interest."

(h) Petitioner's Exhibit 10—Pages 128 and 129 of Life Contingencies by Spurgeon.

(i) Petitioner's Exhibit 11 — Table entitled "Present Values of Annuities Payable for the Lifetime of an Annuitant Age 66 of the Commencement of the Annuity, under Various Mortality Tables with 4% Compound Interest."

14. The following portions of the testimony offered at the hearing of the case before the Tax Court: (portions of Document No. 14).

(a) Commencing with the words "The Court" on page 2 of the Official Report of Proceedings and ending with "Mr. Hurley: A. J. Hurley for the Respondent. Ready, Your Honor," on said page.

(b) Commencing with the words "Lambert B. Coblentz called as a witness for and on behalf of the petitioner . . ." at the bottom of page 18 of the Official Report of Proceedings and ending with the following question and answer on page 21:

"Q. So far as you know, she is still in good health? A. As far as I know."

(c) Commencing on page 45 of the Official Report with the words "Mr. Taylor: It is hereby stipulated between counsel, subject to the objection by the Respondent . . ." and ending with the words "I think the objection is evident" on the first line of page 46, and then taking the following sentence on page 46, "The Court: The Respondent's objection is taken under advisement."

(d) Commencing on page 46 of the Official Report with the words "Mr. Taylor: Mr. Waites, will you take the stand, please" through the answer on

page 49 ending with the words "compound interest tables."

(e) Commencing on page 49 of the Official Report with the question by Mr. Taylor "Q: What does your work as a consulting actuary consist of" and going through the question and answer on page 88 "Q: So the correct value is actually \$170,236.95, the correct value of the life estate? A: Yes."

(f) Commencing at the top of page 90 of the Official Report with "Q: Now in some of the exhibits which have been introduced into evidence which you have prepared . . ." and continuing through the words on page 136 "Mr. Hurley: Respondent rests."

15. Certificate and Seal of the Clerk of The Tax Court of the United States. (Following Document No. 34.)

16. This Designation of the Portions of the Record to be Printed.

17. Notice of Filing of the Designation of the Portions of the Record to be Printed.

Dated May 10, 1949.

/s/ SAMUEL TAYLOR,

/s/ EDGAR SINTON,

Counsel for Petitioner.

[Endorsed]: Filed May 11, 1949. Paul P. O'Brien
Clerk.

